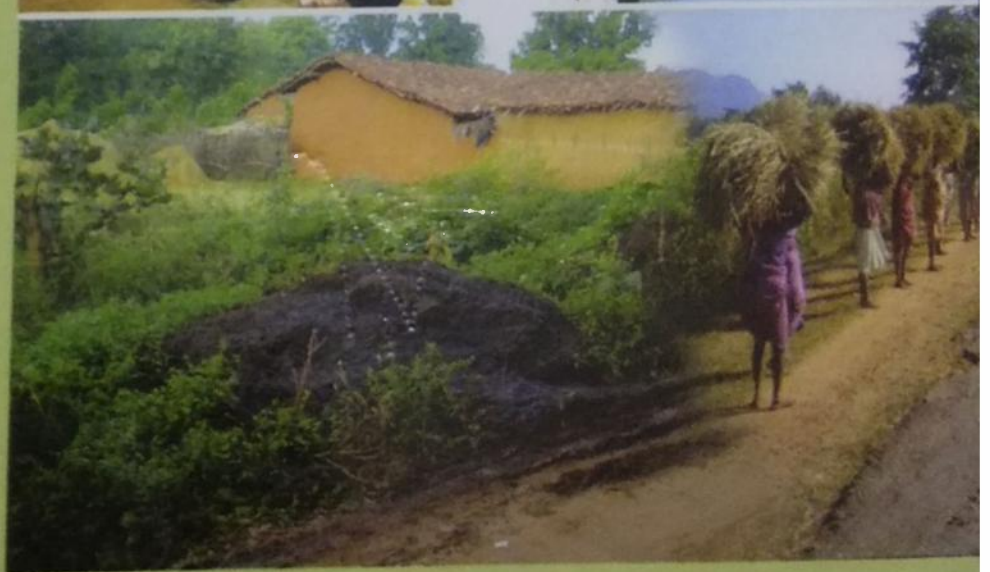
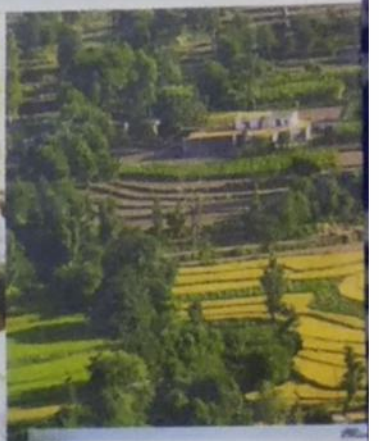


# Two Tribal Friendly Acts and Their Implications



*Edited by*

**A. B. Ota**

**Karunakar Patnaik**

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Scheduled Castes and Scheduled Tribes  
Research & Training Institute, Orissa  
Bhubaneswar-751 003

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## **ABBREVIATIONS**

ADCO	- Autonomous District Council
BDO	- Block Development Officer
CDPO	- Child Development Project Officer
CEO	- Chief Executive Officer
CI	- Circle Inspector
CM	- Chief Minister
CPR	- Common Property Resources
DFO	- Divisional Forest Officer
DI	- District Inspector
DRDA	- District Rural Development Agency
FCA	- Forest Conservation Act
FD	- Forest Department
FDI	- Direct Foreign Investment
FR Act	- Forest Rights Act
FRC	- Forest Rights Committee
GCC	- Girijan Co-operative Corporation
GOs	- Government Organizations
GP	- Gram Panchayat
GS	- Gram Sabha
IAY	- Indira Awas Yojana
ICDS	- Integrated Child Development Scheme
IFA	- Indian Forest Act
ITDA	- Integrated Tribal Development Agency
ITDP	- Integrated Tribal Development Programme
JE	- Junior Engineer
JFM	- Joint Forest Management
JPC	- Joint Parliamentary Committee
MFP	- Minor Forest Produce
MLALAD	- Members of Legislative Assembly Local Area Development



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MOEF	- Ministry of Environment and Forests
MP	- Member of Parliament
MPLAD	- Members of Parliament Local Area Development
MSP	- Minimum Support Price
NGOs	- Non-Governmental Organizations
NIRD	- National Institute of Rural Development
NTFP	- Non-Timber Forest Produce
OPRM	- Orissa Poverty Reduction Mission
PAL	- Panchayat at Appropriate Level
PDS	- Public Distribution System
PESA	- Panchayats (Extension to Scheduled Areas) Act
PRIs	- Panchayat Raj Institutions
PS	- Panchayat Samiti
SC & ST	- Scheduled Caste and Scheduled Tribe
SCSTRTI	- Scheduled Castes and Scheduled Tribes Research and Training Institute
SHGs	- Self-Help Groups
SIRD	- State Institute of Rural Development
STEP	- Sustainable Tribal Empowerment Programme
TAC	- Tribes Advisory Council
TRIPTI	- Targeted Rural Initiative for Poverty Termination and Infrastructure
TSP	- Tribal Sub-Plan
UC	- Utilization Certificate
VAW	- Village Agriculture Worker
VFPC	- Village Forest Protection Committee
VLW	- Village Level Worker
VSS	- Vana Sanrakshana Samiti
WEO	- Welfare Extension Officer
WLPA	- Wildlife Protection Act
WHS	- Water Harvesting Structure
ZP	- Zilla Parishad

## Editorial

This publication is a collection of 19 articles and three Gazette notifications of Government of India. This publication containing the articles is the outcome of intensive and extensive deliberations of a sustained three-day's seminar organized by Scheduled Castes and Scheduled Tribes Research and Training Institute (SCSTRTI) of Government of Orissa at Bhubaneswar from 26th to 28th September, 2007. The seminar dwelt upon two important and major legislations namely the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Act 2 of 2007) besides various issues directly and indirectly relevant to tribal administration in relation to PESA Act of 1996 and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006. The contributors to this collection of articles are distinguished persons representing a wide range of disciplines from government, non-government, academic, social spheres and also 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 Governments 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 Government have



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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. They have suggested for a rethinking on the definition of village in Schedule V areas. Many of the gaps in the PESA Act including absence of dispute resolution mechanism, universal territorial citizenship, tribal ecology, respect for traditional tribal council are highlighted warranting amendments/changes in PESA laws. Prof L.K. Mohapatra aptly suggests for self-regulatory and judicial functions for Gram Sabha. In matters of acquisition of land, he suggests sharing of proportion of profits of project which should go as first charge to the owners before distributing dividends to shareholders and they advocate for limited acquisition.

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 PRIs in tribal areas. Dr. H.P. Acharya, former Director, SIRD has placed a PRI profile of Orissa, the structural graph of Zilla Parishad, Panchayat Samiti and the GP and the devolution status of Orissa in respect of 21 subjects covering 11 departments including the activity mapping exercise. Mr. Damodar Jena in his article "Status of PESA in Orissa, Jharkhand and Andhra Pradesh" has placed a status schedule of PESA. Implementation in these states covering each of the mandated subjects under PESA and suggests for widespread



sensitization and empowerment efforts for effective implementation of PESA. Sankarshan 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-independent 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 decentralised governance in Madhya Pradesh, Mr. Yatindra Singh emphasizes the need for greater participation of people at Gram Panchayat level and enhancement of their capacity building and 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 popularising the Act and in the process, he holds the states as culpable. Harihar Das of Elwin Gabesana Parisada places the Orissa scenario in general and governance pattern under implementation. Professor 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. He suggests for initiatives to reform the mindset of bureaucracy and police for ensuring effective implementation of PESA in the state.

Dr. A.C. Sahoo's critical analysis of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) 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

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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.

This publication containing articles contributed by various writers is perhaps one of the first such publications with such deeper analytical approach on PESA Act as well as Scheduled Tribes and Other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and its implementation.

Each contributor deserves credit for the efforts and also the Institute for bringing out this publication. Thanks are due to all others who were involved in the compilation and tabulation of the script and setting the design of the publication.

It is hoped that this publication will be used as an useful reference material for researchers, academicians and policy makers and in turn will benefit the tribal people for whom the two epoch-making Tribal Acts have been formulated.

**A.B. Ota**

**Karunakar Patnaik**



# **Implementation of Panchayats (Extension to Scheduled Areas) Act, 1996 – Orissa Perspective**

**Karunakar Patnaik**

## **1. Constitutional Mandate**

The Indian Constitution mandates the State to safeguard and promote the interest of scheduled tribes. Under Article 46 of the Directive Principles of State Policy, the state shall take steps for promotion of education and economic interests of SC, ST and other weaker sections. 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 on the administration of scheduled areas of the state. There shall be a Tribes Advisory Council (TAC) with maximum of twenty members of whom 3/4<sup>th</sup> shall be tribal members of the state legislature. 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 consolidated fund for development work leading to welfare of scheduled tribes under Article 275. The overall control of union government over administration of scheduled areas and welfare of scheduled tribes is spelt-out in Article 239 of the Constitution. The President of India may, by order, declare any area/areas to be



scheduled areas and can reschedule 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 Area declared under 1935 Act and report of Scheduled Areas and Scheduled Tribes Commission (Dhebar Commission) 1961. While the Excluded Areas came under the provincial rule of governor and the Partially Excluded Area were brought within the ministerial responsibility. The Scheduled Areas Part A and Part B orders 1950 were notified. Subsequently in 1967 it was declared that the boundaries of Scheduled Areas are to be co-terminus with Tribal Sub-plan Areas(TSP). The administrations of scheduled areas continue to be the special responsibility of the Governor of the state through ministerial accountability.

## **2. Bhuria Committee Report**

With passing of the 73<sup>rd</sup> Constitutional Amendment Act, the Panchayati Raj Institutions secured Constitutional status in 1993 but the 73<sup>rd</sup> Amendment Act did not apply to scheduled Areas under Article 244 of the Constitution – following the Bhuria Committee Report in 1995, PESA came into force w.e.f. 24<sup>th</sup> December, 1996 – the recommendations of the committee were broadly as follows:

- (i) Cognisance of indigenous institutions, leaders and ethos while considering democratic decentralization in tribal areas.
- (ii) Customary laws, usages and arrangements be recognized and allowed to continue – traditional laws and conventions to continue to hold validity.

- (iii) PRI to be more effective and participative to function as institutions of self-governance and development.
- (iv) Flow of adequate funds be ensured.
- (v) Since tribal villages are scattered and small population-wise, the hamlets or habitations may have their own Gram Sabha allowed to exercise customary traditional roles in religions, political, economic, judicial and other fields. Gram Sabha may have a traditional village council to perform these functions. The boundaries of Gram Sabha should be determined not merely with reference to physical parameters but consonance with social, ethnic parameters.
- (vi) A number of hamlets or small villages may constitute a Village Panchayat or Gram Sabha, Anchal or Pragana Panchayat.
- (vii) The broad frame-design of Autonomous District Council (ADCO) of the Sixth Schedule (Assam, Meghalaya, Mizoram & Tripura) be adopted for Fifth Scheduled Areas with suitable variations.
- (viii) Panchayats to have majority of tribal members, both chairman and vice-chairman to be scheduled tribes.
- (ix) Funds as envisaged in Article 243-H & 241-I be made available to Panchayats in Schedule Areas. Funds under Article 275(I) and TSP continue to be available.
- (x) Funds quantified & placed at the disposal of ADC'S for distribution among Panchayats.
- (xi) Education and Health given priority. (First charge)
- (xii) Provisions under Article 243-H and 243-I authorizing



Panchayats to impose taxes, duties, tolls etc. and distribution of funds by SFC be made applicable to Scheduled Areas.

- (xiii) Tribes Advisory Council (TAC) made functional with Chief Minister as chairman.

### **Applicability of PESA and Salient Features**

PESA was made applicable to 9 states i.e. Andhra Pradesh, Chhatisgarh, Gujarat, Jharkhand, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

The major features of PESA are

- (i) Any legislation to be in consonance with customary law, social and religious practices and traditional management practices of community resources.
- (ii) Gram Sabha shall be endowed with the following powers –
  - a. Power to enforce prohibition or regulate, restrict sale and consumption of any intoxicant.
  - b. Ownership of minor forest produce.
  - c. Prevent alienation of land and restore unlawfully alienated land of schedule tribe.
  - d. Exercise control over money lending
  - e. Manage village markets etc.
  - f. Control over institutions and functionaries in all social sectors
  - g. Control over local plans and resources including tribal sub-plan
  - h. Gram Sabha to be center of decentralization in managing, protecting and preserving the traditions, customs of the tribals.

### 3. Orissa Status

Orissa State has 8145081 (22.13%) of tribal population against the total population of 36804660 of the State (Census 2001). About 88.43% of scheduled tribe population alone lives in rural areas as against 85% of total population living in rural areas. Sixty two communities are listed as Scheduled Tribes in Orissa of which 13 tribes have been identified as primitive tribes. About 40% of the tribal people live outside the Scheduled Area in Orissa. Scheduled Areas in Orissa constitute 69614 sq. kms. out of the total geographical area of 155707 sq. km. constituting about 45% of the total area. There are 118 blocks in Scheduled Areas and 21 ITDAs. There is a full-time Minister in-charge of Tribal Development Department of Government.

With the passing of the Panchayats (Extension to Scheduled 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, the following matters have been placed within the perview of Panchayats at respective tiers:

#### **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 (Grama Sabha is the executive authority of Grama Sasan), Gram panchayat shall have power to manage village markets etc.

**Panchayat Samiti:**

Panchayat Samiti, in consultation with the Gram Sasan, shall be competent:

- (i) 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 as may be prescribed by government.
- (ii) To prepare local plan including Tribal Sub-plan for the area and to exercise control over resources of such plans.

**Zilla Parishad:**

- (i) 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.
- (ii) No acquisition of land of development projects or for re-settling or rehabilitation of persons affected by such projects shall be made under any law without prior consultation with the parishad.
- (iii) The parishad shall plan and manage the minor water bodies.

**4. Conformity Legislations**

The following steps have been taken by the state government towards confirmatory action in relation to the

Panchayat Extension to Scheduled Areas (PESA) Act, 1996 (Central) read with the amendments to Orissa Panchayat laws.

- (i) 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 for manufacture or sale of any intoxicant, 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.
- (ii) *The Orissa (Scheduled Areas) Money Lenders Regulation:*

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 any person belonging 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 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 recommendations or refusal within the aforesaid period, it shall be deemed that the Gram Panchayat has accorded recommendation. If it refuses to accord required recommendation, it shall communicate the reasons thereof in writing, to the money-lender (Section 7-A).

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 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 money-lender 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).

(iii) Minor Forest Produce

The State Government in Panchayati Raj Department has brought out a set of rules. These rules are called the "Orissa Gram Panchayat Minor Forest Produce Administration" Rules, 2002. Under these rules, the Gram Panchayats 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 Grama or collected from Reserve Forests and brought into the Grama. Any person intending to procure Minor Forest Produce from the primary gatherers 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 Grama Panchayat on payment of an amount fixed by the government. Detailed procedure is laid down in the said rules.

- (iv) Prevention of alienation of land and restoration of un lawful alienated land of a scheduled tribe:

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.

- (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 favour 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 5 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 a Scheduled Tribe, he shall obtain prior approval of the concerned Gram Panchayat.
- (v) Transfer of agriculture land of Scheduled Tribe by fraud shall now be stored back by competent authority.

The table below will indicate the position of confirmatory action taken by the State Government in relation to the Central Act, 1996.



Sl. No.		Central Act Provision	State Confirmatory Action
1.	Definition of village	A village to consist of a habitation or a group of habitations or a hamlet comprising a community and managing its affairs in accordance with traditions and customs.	Incorporated in State Law.
2.	Status and function of Grama Sabha	Every village will have a Grama Sabha, which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity.	Incorporated in state law with additional provision that it should be consistent with the related laws in force and in harmony with the tenets of the constitution and human rights.
3.	Constitution of Panchayats	Panchayats will be constituted at the village level with reservation for ST in the manner prescribed in part-IX of the constitution.	Extended to reservation in seats and offices at all three-tiers of PRIs.
4.	Acquisition of land for development projects and of displaced persons	Prior consultation with Gram Sabha or Panchayats at appropriate level shall be mandatory	Assigned the power to Zilla Parishad.
5.	Planning and management of minor water bodies	Entrusted to Panchayats at appropriate level.	Assigned to Zilla Parishad.

6.	Grant of prospecting license or mining license or mining minerals.	Prior recommendation of Grama Sabha or Panchayats at appropriate level shall be mandatory.	-do-
7.	Grant of concession for exploitation of minor mineral by auction	-do-	-do-
8.	Enforcement of prohibition/regular or restrict sale of any intoxicant.	Panchayats at the appropriate level – Grama Sabha to be endowed with the power	Gram Panchayat or Grama Sabha to exercise the power.
9.	Ownership of minor forest produce (MFP)	-do-	Followed by Central Act
10.	Prevention and restoration of alienated land of tribals.	-do-	Gram Panchayat
11.	Management of village market	-do-	-do-
12.	Money-lending to Scheduled Tribes	-do-	Followed Central Act
13.	Control over Institutions and functionaries in all social sectors.	-do-	Panchayat Samiti to exercise power in consultation with Grama Sasan.
14.	Control over local plans and resources including tribal sub-plan	-do-	Assigned to Panchayat Samiti



**Critical Issues**

Implementing of PESA over the last ten years has reflected on several issues which need to be addressed by the central and state governments. Although the Panchayats in scheduled areas shall have all the basic features of part IX of the constitution (73<sup>rd</sup> Amendment), under the Extension Act, 1996 the mandatory provisions are to be more specific and explicit which seems to have been lost sight of while legislating at the state level. By virtue of provisions under 73<sup>rd</sup> constitutional amendment, powers and functions of Gram Sabha are left to the wisdom of state legislatures (Art 243A). This has necessitated different states adopting different varied legislations to implement PESA. Under the Extension of Act (PESA) the Gram Sabha is mandated to deal with plans, programmes and projects for socio-economic against possible misuse of power by politicians of higher level institutions and the bureaucracy. This specific and social objective is not given due space in the state legislation. While devolution of powers and authority to the Panchayat institutions is required to be specific and unambiguous, unfortunately this aspect does not find place in the statutory provisions relating to Scheduled Areas and Panchayat institutions in scheduled areas find themselves on the same footing as that of the Panchayats in normal areas. The Panchayats are not expected to be mere executing agencies but as institutions with sufficient freedom and autonomy to take own decisions and manage own affairs to establish their individual identity as units of self-government. This is grossly lacking in the implementation of the Act. While devolution must be based on the cardinal principle that what is appropriate for a given tier should be decided by that tier and not by a higher level, this principle is missing in implementation of PESA. Therefore a mechanism of co-ordination and ladder of organic linkage needs to be worked out for better implementation of PESA. The Tribal Advisory body whereas the PRIs are constitutional entities. Experience has shown that there is

enough scope for placing the PRIs in a confused state of working between the decision (advisory) of TAC and the normal instructions and guidelines issued by appropriate authorities relating to administration of scheduled areas. As per PESA provision the state laws are required to be in consonance with the customs, tradition, religions practices etc. of tribals which vary between groups of tribals. In a village there could be several communities and in that event it is difficult to demarcate a village as ordinarily consisting of a habitation or a group of habitations, a hamlet or a group of hamlets comprising a community as defined under the Extension Act (Sec 4(6)).

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. Although the central Act envisages a strong and powerful and self-reliant Gram Sabha, Orissa law seems to have restricted its functions to the extent that the Gram Sabha shall exercise such power and perform such functions in such manner as may be prescribed. The rationale behind the Act to empower Gram Sabhas to approve and sanction all matters relating to tribal society and their economy needs to be ensured. The underlying taboo of hesitancy and bias in sincerely implementing the provisions of the Act have to be removed. Orissa is one of the leading states to have declared a sound grey areas which need quick resolution. Devolution of power to Panchayat institution in the PESA area is not considered in the true spirit of the constitutional mandate. No specific devolution for the PESA area is either performed nor any set of rules and regulations are adopted. The PESA area Panchayat institutions 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 continues to dominate in the



traditional fashion without any change or orientation in outlook. There is hardly any prescribed or unwritten mechanism through which 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 tribals seems to be under threat even though the Gram Sabha is competent to preserve the community resources. The eminent domain of State ultimately prevails and the Gram Sabha can hardly do anything if its decisions are not honoured. There is no long term planning for the scheduled areas as a whole although location and project specific action is being taken. The rights of tribals over natural resources have not been specified or outlined in the existing state laws. As a result, people's rights in PESA areas over natural resources as inalienable rights in specific resources are grossly in neglect. The provision of 'consultation' as prescribed in PESA is confusing as it would always not mean consent. Besides, neither in PESA nor in the state legislation no punitive step is prescribed to be used as a legal instrument against those authorities/institutions violating such provisions in case Gram Sabha are not consulted or their decisions/views are not honoured. Emergence of parallel institutions and structures and introduction of state specific projects whether in the name of Pani Panchayat, SHGs unnoticeably creates a divide between the PRIs at the village level and at the implementing agencies for which the grass-root democratic institutions in the PESA areas are placed at greater disadvantage.

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## **Implementation of PESA Act: Some Research Findings**

**J.P. Rout & T. Sahoo\***

*"Good Government is no substitute to Self Government."*

*(Bapuji)*

### **Introduction**

"Traversing through the Indus-valley civilization across Mogul and British rule, the Panchayat has always remained vibrant as a federal unit of the grassroot structure of Indian democracy. The 73<sup>rd</sup> Amendment is a watershed for having institutionalized Panchayati Raj as an indelible mark in our federal structure" (Buch, 2001:8). PESA Act is an extension of the provisions to the Schedule Areas with additional powers that help facilitate empowerment of the ST people across the country.

The PESA, Central Act No 40 of 1996 provides for the extension of the provisions of the Part IX of the Constitution relating to the Panchayats to the Scheduled Areas. It is popularly known as PESA Act. It is a revolutionary piece of legislation that ensures restoration of power to tribal communities, and to safeguard their ethnic cultures, customs, traditions and community control over common property resources. The spirit of PESA is to empower Gram Sabha as a basic unit of participatory democracy at grass root. The PESA Act, 1996 envisages the establishment of the village Panchayats as self-governing institutions.



Legislative changes in Orissa Panchayat laws cropped up in accordance with the Central PESA Act, 1996. The necessary amendments to Orissa Panchayat Acts on 22<sup>nd</sup> December 1997 entitled as (1) Orissa Gram Panchayat Amendment Act 1997, (2) Orissa Panchayat Samiti Act, 1997 and (3) Orissa Zilla Parishad Act, 1997 which were followed in February 2002 and march 2007 PRI elections in the State. Further, conforming the Central PESA Act, different administrative departments of Orissa government brought some changes in the existing state rules relating to the transfer of powers to PRIs.

This endeavour for strengthening the PRIs in Orissa State would have resulted in effective empowerment at village/ grassroot level in the process of decentralization of power. It is important that the march of Panchayati Raj in Schedule Areas- both in achievements and shortcomings be assessed on the basis of objective data. As such, the Tribal Advisory Council, (TAC) Orissa proposed on 29.07.2005 to undertake an evaluation study. The objectives of this evaluation study were to assess the implementation status of the Act in the state of Orissa, the extent of awareness among the STs about the PESA Act and measure the usefulness of the provisions of the Act to the tribals in practice and to suggest for effective implementation of the Act.

Scheduled Castes & Scheduled Tribes Research and Training Institute, (SCSTRTI) Bhubaneswar conducted an evaluation study in 2005-06 under the aegis of the TAC and SC & ST Development Department, Govt. of Orissa. The study covers 50 villages in the scheduled areas of Orissa interacting with 14 Gram Panchayats of 6 blocks in Sundargarh, Mayurbhanj and Malkangiri districts. A schedule was administered among the select of more than 100 PRI representatives including 24 women at GP level to provide primary data relating to their awareness and understanding regarding the provisions of PESA Act, 1996 and its usefulness. Besides, secondary data were collected from different



documents/papers of GOs and NGOs. The present paper is primarily based on the above research findings. Besides, the findings of similar researches done by other research organizations are also referred to in this paper.

### **Panchayati Raj in ancient time**

The ancient tradition of village *Panchayat* dates back to *Vedic* period. Koutilya's *Arthasastra* indicates *Panchaparameswr*. It is based on the idea that when five elders come together, God will be present. The decisions of the ancient village *Panhayat* delivered justice to the villagers. They were visualized as obligatory, impartial and judicious. Later village *Panhayat* was developed and took care of the socio-economic and politico-cultural development needs of the village community. Gandhiji's *Gram Swaraj*, (village republic) conceived as the unit of total development, was the goal for India's freedom movement. But it was not originally enshrined in the Constitution of India (1950).

In the aftermath of freedom Panchayatiraj in India became a formal part of our democratic system. The Constitution of India (1950) recognizes Panchayats under Article 40 in its non-justiceable Part-4 and placed them under the competence of the states. The objectives of the Panchayati Raj system are to make the citizens aware about self-dependency and increase courage, decentralization of democratic powers and delegation of powers to the villagers and their representatives and for development of the country through the villages. But the studies on functioning of PRIs reveal that the objectives of Panchayati Raj could not be materialized fully due to casteism, communalism, poverty and mass illiteracy, repeated interference of Govt., political parties and bureaucrats and irregular elections of the Panchayat institutions. The recommendations of Balvant Rai Mehta Committee in 1957, Ashok Mehta Committee in 1977, G.V.K. Rao

Committee in 1985 and Singhvi Committee in 1986 to strengthen the PRIs could not be realized due to lack of desired interests of the State governments.

Considering the dismal functioning of the PRIs in the post independent period, and with a view to strengthen them for the purpose of democratic decentralization and achieving development goal, there was a need to bring constitutional amendments to Panchayat Raj system. The Orissa Gram Panchayat Act was passed in 1960 and the Panchayati Raj was implemented in the state on 26<sup>th</sup> January 1961. Since then the Orissa Gram Panchayat Act has been amended five times, in 1962, 1965, 1968, 1993 and 1997 to achieve the goal and objectives of Panchayat Raj system in the State.

The first generation of Panchayati Raj amendments came by way of 73<sup>rd</sup> Constitutional Amendment in 1992 that endorsed constitutional status and gave more powers and authority to the Panchayati Raj institutions. Part IX of the constitution containing articles 243-D deals with Panchyati Raj Institutions. This amendment gives more powers to Gramasabha consisting of all the adult members registered as voters in the Panchayat area. As per the new amendments, in the village Panchayat, seats will be reserved for women, SC and ST members. An independent Election Commission will be established in the State to conduct elections to local bodies and an independent Finance Commission will be established to provide adequate financial resources to Panchayats. The 11<sup>th</sup> Schedule to the constitution as per the 73<sup>rd</sup> amendment provided 29 functions to the Panchayats. Thus our Prime Minister stressed upon devolution of three Fs- functions, finance, and functionaries to the Panchayats, if they were to be truly empowered to fulfill their mandated role.



## **Emergence of PESA Act**

Perhaps for the first time in the history of Indian law, the provision of an Act (73<sup>rd</sup> constitutional amendment) did not become operative to the whole of Indian territory. According to the 73<sup>rd</sup> amendment the Schedule Areas were excluded from the purview of the Act. As per article 243 M (4) (2), Parliament may by law extend the provision of Panchayats to the Schedule Areas, subject to such exceptions and modifications as may be specified in such a law. It was done so to avoid conflict between traditional institutions and statutory Panchayats. Therefore, agitations were noticed in tribal areas. Considering the growing discontent among the tribals through-out Tribal India, the Central government constituted a Committee in June 10, 1994 headed by Shree Dillip Singh Bhuria, the then MP as its Chairman to suggest salient features of Panchayat law to be extended to the Schedule Areas of the country. The Committee submitted its report on January 17, 1995, which recommended the adoption of three-tier system in the 5<sup>th</sup> Schedule Area. On the basis of recommendations of Bhuria Committee, a bill was passed in the Parliament on 24<sup>th</sup> December 1996. The Act is called provision of Panchayats (Extension to Scheduled Areas) Act (PESA) 1996 (Central Act No.40). The salient features of the Act are as follows:

- 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
- Every GS 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
- Every GS shall approve the plans, programmes and projects for social and economic development before these are taken



up for implementation by the Panchayat at the village level

- Be responsible for identification or selection of beneficiaries under the poverty alleviation and other programmes
- GPs shall be required to obtain from the GS certification of utilization of funds for the plans, programmes and projects
- The GS or GP shall be consulted before making the acquisition of land in the scheduled areas for development projects
- Planning and management of water bodies shall be entrusted to Panchayats at the appropriate level
- The recommendations of GS or GP shall be mandatory prior to grant of prospective license or mining lease for minor minerals in the scheduled areas
- The State legislature shall ensure that the GS and GP are endowed specifically with:
  - power to enforce prohibition or to regulate or restore the sale and consumption of intoxicant,
  - ownership of MFP,
  - power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a ST,
  - power to manage village markets,
  - power to exercise control over money lending to STs,
  - power to exercise control over institutions and functionaries in all social sectors and
  - power to control over local plans and resources for such plans including TSPs.
- The State Legislature 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 Panchayat Samiti or Zilla Parishad do not assume the powers and authority of village Panchayat or Gram Sabha.

- State legislature shall endeavour to follow the pattern of the VI<sup>th</sup> schedule of the Constitution while designing administrative arrangements in Zilla Parishads of tribal areas. Efforts need to be made both by Govt. and NGOs to create awareness among the STs in this regard.

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

As per the guidance of the Central Govt and in accordance with the PESA Act, 1996 necessary amendments were made on 22 December 1997 in the Orissa Grampanchayat Act, 1964, Panchayat Samiti Act, 1959, and Zilla Parishad Act, 1961 and they are titled as Orissa Gram Panchayats Amendment Act, 1997, Orissa Panchayat Samiti Amendment Act, 1997 and Orissa Zilla Parishad Amendment Act, 1997 respectively. The provisions of the Act were followed in the February 2002 and 2007 PRI elections of the State. The powers and functions, which have been assigned to the three-tier PRIs through the above Acts, are as follows:

### **Powers and functions of Gram Sasan**

The state act substituted 'Gram Sasan' for the term 'Gram Sabha' in the central act, which is a body comprising all voters of a Gram. Under the state law, each Gram Sasan will have one Gram Panchayat, the executive body of Gram Sasan. The powers of 'Gram Sasan' are as follows:

- Approves plans, programmes and projects for socio-economic development before they are taken up for implementation by the Gram Panchayat,



## 22 *Two Tribal Friendly Acts and Their Implications*

- Identifies or selects beneficiaries for poverty alleviation or other programmes,
- Submits UCs against funds of development programmes.
- Considers and approves the annual budget and supplementary or revised budget of the Gram Panchayat,
- Organizes community service and draws up and implements agricultural production plans,
- Considers levy of all taxes, rates, rents and fees and enhancement of rates thereof,
- Considers subject matters as may be referred to it by the Gram Panchayat for its decision
- Calls for necessary information and data from the Gram Panchayat, and
- Safeguards and preserves the tradition and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution consistent with the relevant laws in force and in harmony with basic tenets of the Constitution and human rights in Schedule Areas.

### ***Powers and functions of Gram Panchayat***

The Gram Panchayat in Schedule Areas has been entrusted with the following powers and functions. These powers shall be exercised within the local limits of the Gram Panchayat and are subject to the control and supervision of the 'Gram Sasan'.

- Enforcement of prohibition or regulation or restriction of the sale of and consumption of any intoxicant,
- The ownership of Minor Forest Produce,



- Prevention of alienation of land and restoration of any unlawfully alienated land of a scheduled tribe,
- Control over money-lending to the scheduled tribes,
- Managing village markets,
- Forward the annual budget/ supplementary budget/ revised budget to the Sub Divisonal Panchayat Officer appointed by the Director, who shall be competent to examine the budget and shall furnish comments for finalization of the budget and forward the same to Panchayat Samiti as well as to Zilla Parishad for compilation at their level,

### ***Powers of Panchayat Samiti***

The Panchayat Samiti is empowered with the power to,

- Control over institutions and functionaries in all social sectors in consultation with gram sasan
- Control over local plans and resources including tribal sub plans

### ***Powers of Zilla Parishad***

The Zilla Parishad is deployed with the following powers:

- Acquisition of land for development projects and of displaced persons,
- Planning and management of minor water bodies (to be consulted), and
- Grant of processing license or mining license of minor minerals.

### **Comparison of the Central PESA Act and its Orissa Counterpart :**

The comparative statement given below indicates disparities between the provisions of the Central PESA Act,

1996 and that of the counterpart modifications of Panchayat Acts of Orissa in 1997.

<b>Provisions of PESA</b>	<b>Central Act</b>	<b>Orissa Act</b>
For the acquisition of land for development projects	The Central PESA Act makes it mandatory for consultation with Gram Sabhas or Panchayat at appropriate level	Assigned this power to Zilla Parishads
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 Gramsabhas or Gram Panchayats.
Managing the village market and regulating money lending to STs	Endowed Gram Sabha / Gram Panchayat.	Given to Gram Sabha but subject to control and supervision of Gram Panchayat.
Control over local plans and resources including tribal Sub-Plans	Endowed Gram Sabha Gram Panchayat.	Given the power to Panchayat Samiti. It is not mandatory requirement of the Gramsabha.
Exercise of control over institutions	Endowed Gram Sabha / Gram	Given to Panchayat



and functionaries in all social sectors	Panchayat	Samiti but it is subject to consultation with the Gramsabha.
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***It seems that the State of Orissa had complied, though not fully, with the provisions of the Central PESA Act while modifying its PRI Acts. Mandatory provision in the Central Act ensuring tribal communities: control over natural resources, granting licenses for minor minerals and their exploitation and acquisition of land by government for development projects which proposed to be enforced through Gram Sabhas have not been complied with.***

Currently the Panchayat rules of Orissa state government, confirm the reservation of seats for STs in scheduled area on the proportion of their population. The minimum of seats reserved in PRI for STs is 50 per cent. All the posts of chairpersons of the PRIs at all levels are reserved for STs. If the Chairperson is a male, the vice-Chairperson should be a female. One-third seats are reserved for ST women. The SC and ST development department has made suitable amendments in its existing acts/ rules and regulations within the parameter of PESA Act. The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation of 1956 has been amended by Regulation of 2002 (regulation I of 2002), which has come into effect from 4.9.2002. The Orissa (Scheduled Areas Money-Lenders' Regulation, 1967 (Regulation 8 of 1968) is in operation since 15<sup>th</sup> November 1968 with a view to regulating and monitoring money lending activities in the scheduled areas of the state. Further different department's have devolved some powers to PRIs and they have suitably brought amendments to the existing rules. The followings give a short account of the demodifications.



### **Minor Forest Produce**

Panchyat Raj Deptt Resolution No.8131 dt. 26.5.2000 has given the necessary powers to Gram Sabhas based on the Forest & Env. Deptt. Resolution No.5503 dt. 31.03.2000. The Orissa government (Minor Forest Admn. Rules, 2002) has come in to force w.e.f. 15.11.2002. Ownership & Management of 68 MFPs has been entrusted to GPs / Gram Sabha.

### **Enforcement of Prohibition & Sale of Intoxicant**

Revenue & Excise Department vide their Letter No.22977/R dt. 22.04.1999 by amending the Bihar & Orissa Excise Act 1915 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 G.P. is to give permission within 30 days.

**Money Lending** The SC & ST development department has already taken up for amendment of the "Orissa (Schedule Areas) Moneylenders' Regulation, 1967" to empower the GP for control over money lending & issue of license in Schedule Areas. They have also provided that if any Panchayat gives any false information then the Sarapanch or the concerned officials shall be punishable under the provisions of law. It is under the consideration of Law Department.

### **Management of Minor Irrigation Water bodies**

It is vested with ZP

**Minor Minerals** "The Mines & Minerals (Development & Regulation) Act of 1957 (67 of 1957)" has been amended on 31.08.04 wherein no perspective license or manning / quarry lease or its renewal or auction of source shall be granted without recommendation of the concerned GP.

**Transfer of Tribal Land** "The Orissa Schedule Areas Transfer

of Immovable Properties (by STs) Regulation 1956" has been amended by Regulation 1 of 2002, which has come in to effect from 4.9.2002.

**Control of village Markets:** The power to control all kinds of village market in Schedule Areas has been transferred to GPs. This is under subjudice.

**Devolution of powers to PRIs:**

Besides, the Panchayat Raj Department Government of Orissa through the letter No. XXVIII E FC/ dated 03/2003/13638 GP dated 30.07. 2003 has devolved powers to PRIs as follows:

Department/ Subject Transferred	Powers Delegated
<p><b>Agriculture Department:</b></p> <p>Subjects transferred to PRIs are kharif and rabi crop, soil-conservation, horticulture, and watershed.</p>	<p>Sarpanch of GP will sanction the casual leave of the VLWs and VAWs. The Chairman, Panchayat Samiti will sanction the casual leave of the Jr. Agriculture Officer and Jr. Horticulture Officer. The President Zilla Parishad will sanction the casual leave of District Agriculture Officer, District Horticulture Officer and District Soil-conservation Officer.</p>
<p><b>Co-operation Department:</b></p> <p>Subject transferred is credit plan</p>	<p>Chairman, Panchayat Samiti will sanction the casual leave of the CEOs. The President, Zilla Parishad will sanction the casual leave of Dy Registrar</p>



	and Asst Registrar of Co-operative Society.
<b>Food Supply and C.W. Dept:</b> Subject transferred is Public Distribution System.	President, Zilla Parishad will sanction the casual leave of Civil Supplies Officer.
<b>F&amp;ARD Department:</b> Subjects transferred are Dairy and Fishery.	Sarpanch, Grampanchayat will report the attendance of Live Stock Inspector to Chairman and Veterinary Asst. Surgeon. The Chairman, Panchayat Samiti will sanction the casual leave of the Veterinary Asst. Surgeon and Live Stock Inspector. The President Zilla Parishad will sanction the casual leave of District Fisheries Officer, Asst. District Fisheries Officer and Chief District Veterinary Officer.
<b>H &amp; F.W. Department:</b> Subjects transferred are Health and Family welfare Schemes.	Sarpanch or Naib Sarpanch whosoever is a woman will sanction the leave of Village Level Health Worker (Female)/ ANM. The Chairman, Panchayat Samiti will sanction the casual leave of the Medical Officer in charge of CHC /PHC/ Hospital. The President, Zilla Parishad will sanction the casual leave of Chief District Medical Officer.

<p><b>P.R. Department:</b></p> <p>Subjects transferred are poverty alleviation, road, culvert, bridges, and ferries, minor forest produce, rural housing, market, non conventional energy and maintenance of community assets.</p>	<p>Chairman, Panchayat Samiti will sanction the casual leave of BDO.</p>
<p><b>R.D. Department:</b></p> <p>Subjects transferred are drinking water and sanitation.</p>	<p>President, Zilla Parishad will sanction the casual leave of executive Engineer, Rural Water Supply and Sanitation (RWSS). The Water supply and sanitation assets of Rural Development Dept have been transferred to PRIs. Self-Employed mechanics deployed by RWSS will work under respective GPs, which will pay their remuneration from the grants, made available under 12<sup>th</sup> Finance Commission award.</p>
<p><b>School &amp; Mass Education Department:</b></p> <p>Subjects transferred are Primary education, Non-formal education and Adult education.</p>	<p>Sarpanch, Grampanchayat will sanction the leave of Head masters of Primary Schools and recommend the transfer of schoolteachers. The President, Zilla Parishad will sanction the</p>



	<p>casual leave of C.I. / D. I. of school. The para teachers engaged by School &amp; Mass Education Department at will work under Zilla Parishad. A Committee comprising of Chairman, BDO, D.I. of school will make transfer of primary teachers within the panchayat samiti and limits of educational district. Recommendation of Sarpanch will be given due weightage for transfer within the Panchayat Samiti. In case of transfer of a teacher from one Panchayat Samiti to another Panchayat Samiti the above Committee will recommend the same to the Zill Parishad. A Committee comprising President, Zilla Parishad, Executive officer, Zill Parishad and D.I. of Schools and C.I. of schools will take decision regarding inter-block transfer of primary school teachers within the educational district.</p>
<p><b>ST &amp; SC Dev. Department:</b></p> <p>Subjects transferred are Primary education.</p>	<p>Sarpanch, Grampanchayat will sanction the leave of Head masters of Sevashrams. The Chairman, Panchayat Samiti will sanction the casual leave</p>

	of Welfare Extension Officers. The President, Zilla Parishad will sanction the casual leave of District Welfare Officers.
<b>W &amp; C. Dev. Department:</b> Subjects transferred are Mid-Day-Meal programme and social security schemes.	Sarpanch or Naib Sarpanch whosoever is a woman will sanction the leave of Anganwadi Workers. The Chairman/Vice-Chairman, Panchayat Samiti, Whosoever is a woman, will sanction the casual leave of the CDPO, ICDS. The President, Zilla Parishad will sanction the casual leave of District Social Welfare Officer.
<b>Water Resources Department:</b> Subject transferred is Minor Irrigation up to 100 acres.  Executive Engineer, M.I.	Chairman, Panchayat Samiti will sanction the casual leave of Asst Engineer, M.I. The President, Zilla Parishad will sanction the casual leave of

*Suggestions of National Law Institute:*

**Further the National Law Institute, New Delhi has offered the following suggestions for amendment and change in the existing Acts and Rules of all the State Govt. Departments keeping the provisions of PESA Act in view.**

Department/ Act	(Section) Amendment/ Change suggested
<b>W.R. Department</b> <b>The Orissa Irrigation</b>	<b>(Section 5)</b> Irrigation Officer, or any



<p><b>Act, 1959</b></p>	<p>person acting under the general or special order in writing of an Irrigation Officer, shall take the prior approval of the Gram Sabha or the Panchayat before undertaking any of the activities listed in Sub-section (I) in a State's Sch. Area.</p>
<p><b>Industry Department:</b></p> <p><b><i>The Orissa Khadi and Village Industries Board Act, 1955</i></b></p>	<p><b>(Section 4)</b> Nominate a member from the Gram Sabha or the Panchayat to represent the Sch. Areas of the State in the Khadi and Village Industries Board.</p>
<p><b>Steel &amp; Mines Department</b></p> <p>The Orissa Minerals (Prevention of Theft, smuggling and Other Unlawful Activities) Act, 1988</p>	<p><b>(Section 5/6)</b> Consult the Gram Sabha or the Panchayat of a Sch. Area of the State before granting a license in respect of mineral deposit in the Sch. Area.</p>
<p><b>Finance Department</b></p> <p><b><i>The Orissa (Scheduled Areas) Money-lenders' Regulation, 1967</i></b></p>	<p><b>(Section 4)</b> Gram Sabha or the Panchayat as the case may be shall be the licensing authority under this section.</p>
<p><b>Excise Department</b></p> <p><b><i>The Bihar And Orissa Excise Act, 1915</i></b></p>	<p><b>(Section 4)</b> Consult the Gram Sabha or the Panchayat of a Scheduled Area prior to declaring as to what shall be deemed to be (Section 13) 'country</p>

	<p>liquor' for the purpose of the Act. and Issuing license to under take activities listed in section 13 shall be vested with the Gram Sabha or the Panchayat.</p> <p>(Section 14) Gram Sabh a or the Panchayat shall regulate the drawing of <i>tari</i> in the Sch. Areas of the State.</p> <p>(Section 16) A license required for depositing or keeping intoxicant in warehouse or other place of storage in a Scheduled Area of the State shall be issued by the Gram Sabha or the Panchayat</p>
<p><b>R &amp; D M Department</b></p> <p><b><i>The Orissa Government Land Settlement Act, 1962</i></b></p>	<p><b>(Section 3)</b> Consult the Gram Sabha or the Panchayat prior to exercising any of the power under sub-section (I) in respect of land in the Scheduled Area</p>
<p><b>R &amp; D M Department</b></p> <p><b><i>Orissa Bhodan and ordinarily Gramdan Act, 1970</i></b></p>	<p><b>(Section 2-M)</b> A village shall mean 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.</p> <p>(Section 12) Land sought to be donated in the Sch. Areas of the State the approval of the Gram Sabha or the Panchayat shall be taken.</p>



<p><b>R &amp; D M Department</b></p> <p><b><i>Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act, 1972</i></b></p>	<p><b>(Section 2)</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.</p>
<p><b>F &amp; A R D Department</b></p> <p><b><i>The Orissa Lived Stock Improvement Act, 1957</i></b></p>	<p>In a Scheduled Area of the State a license for keeping a bull shall be granted by the Gram Sabha or the Panchayatg.</p>
<p><b>F &amp; A.R.D Department</b></p> <p><b><i>The Orissa Animal Contagious Diseases Act, 1949</i></b></p>	<p><b>(Section 9)</b> Consult the Gram Sabha or the Panchayat prior to issue of notification under sub section (I) and prior to prohibiting or regulating the holding of animal markets, animals fairs, animals exhibitions or other concentration of animals in any Scheduled Area.</p>
<p><b>Agricultural Department</b></p> <p><b><i>Agricultural Produce Markets Act, 1956</i></b></p>	<p><b>(Section 3)</b> Regulation of purchase and sale of agricultural produce in a Scheduled Area of a state shall be done by the Gram Sabha or the Panchayat.</p>
<p><b>F &amp; Environment Dept.</b></p> <p><b><i>The Orissa Forest Act, 1972</i></b></p>	<p><b>(Section 3)</b> Section 4 Before constituting any land in a Sch. Area as a reserve forest, the Government shall consult the Gram Sabha or the Panchayat</p> <p><b>(Section 11)</b> Nothing in this section</p>

<p><b>The Orissa Forest Produce (Control of Trade) Act, 1981</b></p>	<p>shall affect the right of the Gram Sabha or the Panchayat of a Sch. Area to exercise its right of way or right of pasture, or the right to forest produce or a watercourse or to use of water</p> <p><b>(Section 30)</b> Consult the Gram Sabha or the Panchayat of a Scheduled Area before issuing a notification under sub-section (I) of Section.</p> <p><b>(Section 31)</b> The management of village forests in a Scheduled Area shall be regulated by the Gram Sabha or the Panchayat</p> <p><b>(Section 36)</b> Nothing in this section shall affect the right of the Gram Sabha or the Panchayat in a Scheduled Area over exercising its rights in a forest, which is not a protected forest.</p> <p><b>(Section 41)</b> State Government shall consult the Gram Sabha or the Panchayat prior to taking control over forestland situated in a Scheduled Area.</p> <p><b>(Section 42)</b> State Government shall consult the Gram Sabha or the Panchayat prior to prohibiting the cutting of fruit bearing trees standing on a land in a Sch. Area.</p> <p><b>(Section 45)</b> Nothing in this section shall affect the ownership rights of the Gram Sabha or the Panchayat in a Scheduled Area over timber and other forest produce.</p> <p><b>(Section 49)</b> State Government shall</p>
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	<p>consult the Gram Sabha or the Panchayat prior to issuing a notification to regulate the transit and possession of all timber and other forest produce in a Sch. Area.</p> <p><b>Clause- (iii)</b> Right over all timber, wood found adrift, breached, stranded or sunk within the territorial limits of a Scheduled Area shall vest with the Gram Sabha or the Panchayat.</p> <p>(Section 4) The Gram Sabha or the Panchayat in respect of forest produce grown on Scheduled Area land.</p> <p>(Section 6) In respect of a Scheduled Area the Gram Sabha or the Panchayat shall be appointed as an agent under sub-s (i) and at least one member representing the Gram Sabha or the Panchayat in Scheduled Area.</p>
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### **Awareness on PESA Act and its implementation**

**Observation at a National Workshop on PESA in NIRD, Hyderabad:** "The Panchayats (Extension to the Schedule V Areas) Act, 1996 (PESA) is a revolutionary piece of legislation for establishing grassroots governance characterized by autonomy, transparency and accountability to safeguard and preserve the traditions and customs of tribals. This is applicable to the Schedule V Areas of the country. In order to comply with the Constitutional obligations, the States having Schedule V Areas enacted the Conformity Act incorporating the provisions of PESA. The passing of the Conformity Acts by the respective States is not only a prerequisite; rather the States have to formulate rules and regulations to give effect to that. Moreover, it is obligatory that the States concerned should also modify various existing Acts, Rules and Regulations, which have direct

bearing upon the provisions of PESA, such as, Excise Act, Money Lending Act, Land Revenue Act, etc. (NIRD, 2006)".

Research findings of an NGO: *The study of (Pandey and Others, 2003) in the context of functioning of Gram Sasan/Sabha, reveals that all the Gram Panchayats have Gram Sasans, all Ward Members, Sarpanches and Samiti Members have attended their respective Gram Sabha meetings but the percentage of attendance of Gram Sabha Members is about 51% and for female members it is below 40%, about 33% GS members and 50% Female GS members have no idea about the powers of approving socio-economic plans and programmes, identifying beneficiaries by the Gram Sabha. About 52% have no idea about the power of controlling MFP, 31 % for controlling communal/ forest land and 85% on the issues of tribal traditions and cultural practices None of the women respondents know that women issues are being discussed in the GS and GP meetings. Due to lack of awareness and knowledge neither the members of GS nor the elected PRIs are being actively involved in GS/ GP meetings. Around 92% female GS members, 85% female Ward members, 54% Samiti Members, 30% Sarpanches and 20% Chairpersons have no ability to interact with Officials. Most of the PRI representatives (62%) have no idea about the functionalities of some provisions of PESA and only about 29% of the total respondents and all the female respondents have reported that the provisions of PESA are not adequate to empower GS/GP. In Bonai area, only 2% women are attending the Gramsabha and their relatives enjoyed almost all the powers of women PRI Representatives.*

The newly elected PRI Representatives, like Ward Members, Sarpanches, Samiti members, Chairmen and Vice-Chairmen have little experience and knowledge about



administrative affairs, development interventions and political functioning. In some cases they are semi-literate or little literate. In most cases the bureaucrats and the local elites baffle them for their ignorance. Thus, a synergistic approach for creating mass awareness about the PESA Act among the tribals should be developed at all level, through government, NGOs and social activists organizations for undertaking training programmes, seminars and workshops.

***Self-assessment exercise by trainees at SCSTRTI:***

With massive problems like illiteracy, ignorance, gender injustice, political opportunism, PRIs in Schedule Areas can attain their goal through sustained training specially designed orientation courses for their representatives. Thus the Govt. of Orissa in ST & SC development department conducted trainings on PESA Act at Scheduled Castes and Scheduled Tribes Research Training Institute (SCSTRTI), Bhubaneswar for PRI representatives and tribal elites of scheduled areas with a view to create awareness about constitutional amendments on Panchayati Raj and tribal empowerment. The chief objectives of the training included discussions about the hindrances in implementation of PESA Act in reality and promotion of capacity building of the trainees in tackling various problems of STs within the parameters of PESA Act and implementation of development schemes.

During the years, 2004-5 and 2005-06, the Institute organized 10 training programmes on "PESA Act, tribal empowerment and their development" during for 198 tribal elites and PRI representatives, like 24 gramsabha/ward members, 101 Sarpanches, 4 Naib Sarpanches, 55 Samiti members, 12 Chairmen and Vice- Chairmen and 2 Zilla Parishad members of 36 Blocks in 11 Integrated Tribal Development Agencies, namely Baripada, Bonai, Champua, Karanjia, Keonjhar, Nilagiri, Phulbani, Panposh, Rairangpur, Sundargarh and Thuamul Rampur. Besides, 5 WEOs who had accompanied the PRI representatives were also imparted the training. Among 198 trainee-participants, the women (115)

out numbered their counterpart men (83). All of them were scheduled tribes, like Bathudi, Bhuyan, Bhumija, Bhumia, Binjhia, Gond, Kharia, Kisan, Kolha, Kondh, Mahali, Munda, Oraon, Santal, Saunti and Sabara.

The group discussion on "Management and Implementation of PESA Act in Scheduled Areas" was made in every training programme. A self-assessment exercise followed every group discussion. A compilation and analysis of the group discussion reports revealed that the trainings were reported to be effective with the following realization of the participants. The training empowered the tribal participants and enhanced their knowledge about scheduled area, 73<sup>rd</sup> Constitutional Amendment and PESA Act and its different provisions meant for tribal development, functional, financial and administrative powers transferred to PRIs, duties and responsibilities of PRI representatives and utilization of unitized potentials, techniques of exercising the entrusted powers, financial management and record-keeping and accounting procedures of PRIs, flow of funds and raising own fund and development strategies including planning and implementation and monitoring of different development programmes. They felt that there was need for respecting the decisions of Gramsasan/ Gramsabha in democratic and participative mode and utilization of available local resources and potentialities for the development of the people and the community.

The resume of the group discussions and self-assessment exercise is reproduced below.

- As regards women participation in Panchayatraj movement it was estimated that before the first generation of PanchayatiRaj the percentage of participation was 4% to 5% which increased to 25 % after 73<sup>rd</sup> Amendment and further raised to 40 % in the aftermath of PESA Act. Now, more women are chosen than before because of the status of their relations and for their qualities, such as no-smoking



no-drinking habits and possibly less corruption practices. But in reality, women face considerable handicaps for their inadequate education and self confidence, burden of reproductive roles as well as opposition of tribal cultural and religious views. That is why most women PRI representatives often act on proxies. In spite of all these, the women representative seeks the development priorities, like checking outflow of water from, and inflow of liquor in to the villages, family planning, provision of safe drinking water and primary education at villages.

- Except utilization on grants in roads, markets and water bodies, Sarpanches are restricted to utilize funds money in other constructive works that are the need of their areas.
- Non co-operation among the members of Pallasabha and GramSabha creating problems in the decision process for undertaking development programmes.
- Co-operation of the Government officials in functioning of PRIs is not up to the desired extent.
- The PRI representatives remain unaware of many rules, regulations, constitutional amendments made from time to time in scheduled areas.
- Interference of government officials poses hindrances in implementing different developmental works in village areas.
- Some times PRI representatives are getting scared of government officials for taking any bold steps against their manipulations.
- Before the training the participants were unaware of the PESA Act. Such training to PRI representatives immediately after PRI election of 2002 would have been more fruitful and effective.

- After this training, they felt empowered with a knowledge base of rules, regulations relating to PRI, their rights, duties, responsibilities and constitutional amendments applicable to their areas.
- They aspired that the training would help them in solving socio-political problems in their area in their future course of action.

Most of the participants reported to have encountered the following problems while discharging their duties.

- Pallisabhas and Gram Sabhas were not being held regularly for which implementations of the development programmes get delayed. Execution of all development works had not been decided at Pallisabha/Gram Sabha. Drunkard people attended the Pallisabha and disrupted decisions. Less women participation in Pallisabha hardly opens up any scope for raising women related issues. Problems arose in selection of village labour leaders at Pallisabhas for undertaking construction works.
- Discontentment arose among the intended beneficiaries for distribution of houses under Indira Aawas Yojana, old age pension, and widow pension as scanty funds are sanctioned under these heads. Besides, party politics at village level was a major problem in taking right decision for implementation of development programmes.
- Grants-in-aid have not been sanctioned and reached the Panchayats for development intervention in scheduled time. Further difficulties aroused in supervision of development works when the relations of PRI representatives take up work orders.



- Right to get information about the sources as well as the amount sanctioned for development work can't be exercised due to non- cooperation of government functionaries at their offices. Engineers at block level are not preparing running bills in time that caused delay in progress of construction work.

It is universally felt that the empowerment of the Panchayat Raj Institutions cannot be completed without devolution of adequate and rightful financial and administrative powers to them. Therefore, the PRI representatives had made following suggestions:

- There is no special provision for customary mode of dispute resolution to deal with cases in the Schedule Areas. Special amendment is required for this purpose.
- The State legislatures may transfer by law appropriate institutions to the control of Panchayats. Prompt action to finalize the rules and procedures for implementation of the Acts should be taken.
- The DRDA should also function under the overall control and supervision of the District Panchayats.
- When the State and Central Governments entrust schemes to any level of Panchayats or when the Panchayat at higher level does the same to the Panchayats at the lower level, necessary funds as well as staff support should be provided to the Panchayats to which the schemes are entrusted.
- People directly elect the Sarpanch of a Gram Panchayat. So the Sarpanch should be removed

through a vote of no-confidence motion moved by the majority of the word members but not by the Collector.

- Like the MP LAD / MLA LAD Fund, the Sarpanch/ Chairman Panchayat Samiti/ Chairman Zilla Parishad may also be provided with LAD Fund to be involved with direct development programmes of their areas and the people.
- There should be an annual meeting of Sarpanches of every Block with a view to share their experiences and problems in the implementation of the Act and to be refreshed and reoriented with the recent modifications of policies and guidelines relating to Panchayati Raj system.
- All societies, clubs, corporations and NGOs working at village level should be accountable to Gram Sabha.
- The training programme on PESA Act should be organized at district level through inter departmental co-ordination which would enable them to impart training to all the PRI representatives in Scheduled Areas within a scheduled time frame. The Secretary, Panchayat Raj Department may take steps to publish and distribute books to PRI Representatives on PESA Act to speed up awareness building among for strenthning development in Scheduled Areas.
- One- or two-day awareness training to the Sarpanches should be organized immediately after the PRI election followed by a week-long orientation-training programme after one year. There should be special and separate training



programmes for the women PRI representatives. Off-campus orientation training programmes and refreshers' training programmes may be organized by the SCSTRTI, Bhubaneswar and SIRD, Bhubaneswar in collaboration with SSD Department and Panchayat Raj Department respectively for all the PRI representatives at Block, Subdivision and Districts level.

- Active NGOs can also be associated in the training programmes and Audio-Visual Aids. Songs and Dramas in local/tribal languages should be arranged for dissemination of information in a more effective way.

**Research Findings of SCSTRTI:** The evaluation research on "Usefulness of PESA Act in the Schedule Areas of Orissa" was primarily based on data collected from 157 respondents of different category of PRI functionaries. Ethnically, 137 (87%) of the total respondents are STs, 5 (3%) are SC and 11 (7%) are OC and 4 (3%) are OBC (See Table below).

**Ethnic Composition of PRI Functionaries & WEOs**

Sl. No.	Category of Respondents	Community				Total
		ST	SC	OC	OBC	
1	Chairman	6	-	-	-	6
2	Vice- Chairman	3	-	-	-	3
3	P.S.Member	20	1	-	1	22
4	Sarapanch	28	-	-	1	29
5	Naib Sarpanch	10	1	-	1	12
6	Ward member	9	-	-	-	9

7	Gram Sabha					
	Member	57	3	-	1	61
8	WEOs	4	-	11	-	15
	<b>Total (%)</b>	<b>137</b> <b>(87.26)</b>	<b>5</b> <b>(3.18)</b>	<b>11</b> <b>(7.01)</b>	<b>4</b> <b>(2.55)</b>	<b>157</b> <b>(100)</b>

Among the respondents 6 (8%) are Chairmen 3 (2%) are Vice-Chairmen, 22 (14%) are P.S members, 29 (18%) are Sarpanches, 12 (8%) are Naib-Sarpanches, 9 (6%) are Ward members, 61 (39%) are Gram Sabha members, 15 (10%) are Block Extension Officers. Among the total 61 Gram Sabha Members, 10 are traditional elites and the rest 51 are members of the village community. Out of 157 respondents, 121 (77%) are males and 36 (23%) are females. Among the respondent 56% are young in the age group of 18 to 35 years and 44% are adult and old (See table below).

#### Sex and Age group of Respondents

Sl. No.	Category of Respondents	No.	Sex		Age group	
			Male	Female	18-35	36+
1	Chairman	6 (8.32)	6	-	3	3
2	Vice-Chairman	3 (1.91)	3	-	2	1
3	P.S. Member	22 (14.01)	14	8	12	10
4	Sarpanch	29 (18.48)	21	8	20	09
5	Naib-Sarpanch	12	3	9	5	7



		(7.64)				
6	Ward Member	9 (5.73)	8	1	4	5
7	Gram Sabha Member	61 (38.86)	52	9	39	22
8	Govt. Office (WEO)	15 (9.55)	14	1	3	12
	<b>Total</b>	<b>157</b>	<b>121</b>	<b>36</b>	<b>88</b>	<b>69</b>
		<b>(100%)</b>	<b>(77.07)</b>	<b>(22.93)</b>	<b>(56.05)</b>	<b>(43.95)</b>

As regards educational qualifications of the respondents 71 (45%) out of 157 studied up to primary level, 47 (30%) matriculation level and 36 (23%) above matric and 3 (2%) respondents were found without any educational level. (See table below).

#### **Educational Level of Respondents**

Sl. No.	Category of Respondents	Without any level	Primary	Matric	above Matric.	Total
1	Chairman	-	-	3	3	6
2	Vice- Chairman	-	-	1	2	3
3	P.S.Member	-	11	7	4	22
4	Sarpanch	-	11	13	5	29
5	Naib Sarpanch	-	10	1	1	12
6	Ward member	1	5	2	1	9
7	Gram Sabha Member	2	34	20	5	61
8	WEOs	-	-	-	15	15
	<b>Total (%)</b>	<b>3</b> <b>(01.91)</b>	<b>71</b> <b>(45.22)</b>	<b>47</b> <b>(29.94)</b>	<b>36</b> <b>(22.93)</b>	<b>157</b> <b>(100)</b>

**Implementation of PESA in the Scheduled Areas of Orissa:** Opinions of PRI members and village elites of 6 blocks of 3 districts namely, Mayurbhanj, Malkangiri and Sundergarh and WEOs working in scheduled areas, who had undergone training on PESA Act, tribal empowerment and their development at SCSTRTI, Bhubaneswar were collected on 4 different aspects, like (i) awareness about the act, (ii) structure and functions of Gram Sabha, (iii) problems in implementation of development works and (iv) further suggestions for improvement of the situation.

About awareness of PESA Act, most of the respondents expressed that they were totally unaware about PESA Act and had not heard about it. Very few of them expressed that they knew a little about the PESA Act. Most of them were unaware of the devolution of power to PRIs through PESA Act for which they are unable to exercise power, which shows ineffective implementation of PESA Act. Very low attendance of members in general and women in particular in the meetings of Panchayats and Gram sabhas and interference of powerful persons and relations of PRIs in decision-making activity are very common in the scheduled areas.

Regarding selection of beneficiaries, labour leaders and distribution of BPL cards, Indira Awas houses, old age pension, widow pension, disabled pension, the Sarpanch or the departmental officers are reported to be the final decision taking authority instead of the people themselves. A loyal man collects the signatures of the people from door to door to confirm the decision taken in the meeting some-time back. The leaders/government officers are facing difficulties in implementation of PESA Act in these areas. When interviewed, some of the PRI representatives, WEOs, and other leaders remained quiet and silent and some of them stated that there was no problem in implementation of the PESA Act in their area. The PESA Act is not properly implemented in the area where the Sarpancha /PRI representatives are semi-literate and mostly women.



In the aftermath of PESA, the faith of Gramsabha is based on the belief that the objective conditions of the poor are directly involved in the process of formulation and implementation of decisions affecting their lives. Therefore, it was imperative to collect, compile and analyse the minutes of 12 meetings of Gramsabhas of 9 Grampanchayats to study their structure and functions. The analysis revealed that the Gramsabhas were constituted of all the voters of the villages coming under Gram panchayat whose names were enrolled in the electoral roll. Generally the Gram Sabha meeting was held either at GP office or at market place. Out of 12 meetings, 5 meetings are held in GP Office, 4 at market place and 1 at Up School and every meeting was presided over by the Sarpanch. The lowest numbers of member present in the meeting was 48 and the highest number was 107. Regarding the attendance of males the lowest number was 30 and the highest number was 110. The female participation in the meetings was low. On an average each Gram Sabha sat thrice in a year. The meetings were held on the Republic Day (26<sup>th</sup> January), Independence Day (15<sup>th</sup> August) and Gandhi Jayanti Day (2 October). In rare cases the Gram Sabha meetings were held on any day of February. The average number of members of participation in every Gram Sabha meeting was 84. The participation of women members was about 30% and the male members were 70%. Almost all PRI representatives, including the women usually participated in the Gram Sabha meetings. The participation of G.S. members especially women is insignificant in number or in most cases, reported to be nil. Such low participation can be mainly attributed to lack of awareness, poverty, illiteracy and contrasting groups (traditional tribal elites and modern as well as new entrant to Panchayat politics) leading the decision. The following statement pictures the business scenario of 12 Gramsabhas, i.e., in selected of Scheduled areas of Orissa.

Sl. No.	Business / Discussion Particular	Score (N= 12 G.S.)
1	Approval of annual Income & expenditure	3 G.S. (25%)
2	Annual budget provision & its modification	3 G.S. (25%)
3	Utilization certificate of previous year	4 G.S. (33%)
4	Selection of beneficiary for IAY, OAP, old-age Pension, WP (Widow pension) ODP (Orissa Disabled Pension), Antodaya & Annapurna Yojana, SHG (Self Help Groups)	6 G.S. (33%)
5	Creation of education, health infrastructure including safe drinking water under Swajaladhara yojana and rural water supply scheme	6 G.S. (50%)
6	Issues like distribution of consumer product child development programmes, verification of landless farmers, eleventh finance commission and BPL list has been discussed & finalized	2 GSs (16%)
7	Ownership of minor forest produce	3 G.S. (25%)
8	Irrigation programme under WHS	6 G.S. (50%)

The above table explains that major issues like acquisition of land for development programmes, managing and regulating the village market, control over local plans and resources including tribal sub plans and exercise of control over institutions and functionaries in all social sectors are conspicuously absent in the discussions at Gram Sabha meetings.

**Extent of awareness:** The importance of participation of common man in the activities of PRIs through Gramsabha meetings has not been realized in practice for want of awareness. Out of 140 respondents, 90 (64%) are aware of



PESA Act and 50 (36%) were unaware of the Act. About 65 (72%) PRI members had got information on PESA Act from the interaction with the government officials. (28 (31%) from the training at SCSTRTI and 11(12%) from the awareness campaign of the NGOs). Regarding awareness about the year of implementation of PESA Act in the Center and in Orissa 55 (61%) and 61(68%) respectively respondents had given the correct answer. Eighty (89%) PRI members could spell the acronym of PESA, 76 (84%) members could explain about constitution composition of Gram Sasan and only 25 (28%) members were aware about the place, where the Gram Sabha takes place. About 125 (89%) respondents had given correct answer upgrading the number of Gram Sabha meetings to be held in a year and 119 (85%) respondents rightly replied about the constituents of Gram Sabha members. As many as 121 (86%) respondents knew about the presiding position chairperson in the Gram Sabha meeting.

As regard to provision of reservation of seats for STs in PESA Act it was found that they were partly aware of the provisions. About 72 (51%) answered that more than 50% reservation of seats for STs, 38 (27%) members mentioned about reservation of post of Chairman to STs at all level of PRIs and 17 (12%) explained of one-third reservation for ST women.

In case of sanction of socio-economic development projects, 107(76%) members, in selection of beneficiaries, 105 (75%) members in land acquisition cases, no member in case of control and sale of intoxicants, 88 (63%) members on control over MFP, 65 (46%) members regarding management of market, 87 (62%) member, on land alienation cases 22 (16%) members on control over money lenders, 42 (30%) members on submission of UC for the completed work, 51 (36%) members on control and regulation over functionaries of NGO, 19 (14%) members regarding management of minor water bodies, 16 (11%) member on preparation of plans and management of natural resources, 20 (14%) members



regarding rehabilitation of displaced persons, 24 (17%) members on fixation of price of MFPs, 73(52%) members regarding grant of license for minor minerals, 10 (7%) members on points of discussion in the village development programmes, 137 (98%) members on settlement of disputes by Gram Sabha, 23 (16%) members were made aware of the provisions, about 136 (97%) respondents correctly explained the activities of GP and co-ordination in the work among the PRIs, 4 (3%) members were unaware of it and 1 (0.71%) could not speak of it. All the respondents were of the opinion that PRIs should be endowed with more powers like financial, 40 (29%) on administrative and 2 (1%) both on administrative and financial, (66%) and 28(20%) on posting of necessary technical staff.

### **Conclusions & Suggestions:**

The Panchayati Raj institutions in the Schedule Areas today offer a deeply cherished goal and 'a creative tool' to usher in all-round tribal development. Despite the constitutional and legislative boost accorded to PRIs by PESA Act, most of the PRIs of Orissa continue to fail the aspirations of the people. Some traditional and influential persons and women stay away from Gramsabha meetings and in the larger community participation in the tribal development process. Their services could not be utilized at par with the expectation for village development. The field investigation among PRI members confirms this.

The ST & SC Development Department and Panchayati Raj Dept., Government of Orissa have taken revolutionary steps for devolution of powers to PRIs and amendments of existing rules in consonance with Central PESA Act. Panchayat Acts of Orissa Government have been amended following some provisions of the Central PESA Act, 1996. The guidelines of the Act were followed in the February 2002 and March 2007 PRI elections in the State. The implementation of PESA Act in Orissa confirms the norms for reservation of 50% of the total seats for STs, one-third seats in the PRI for ST women and all the posts of Chairpersons of the PRIs at all levels. Besides, men



and women representatives have shared their position of Chairperson/Vice-Chairperson in the PRIs at all level. Likewise, the SC and ST development department has made suitable amendments to some existing Acts, rules and regulations, such as "The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956", amended by Regulation of 2002 and "The Orissa Scheduled Areas Money Lenders Regulation, 1967 (Regulation & of 1968)", amended by Regulation I of 2001. The PESA act has become operative in the entire Schedule Areas of Orissa. By end of 2003, it covered 13 districts, 120 Panchayat Samities, 1941 Gram Panchayats/ Gram Sabhas constituting 19,774 villages having 92,13,381 persons. Out of the total population in Schedule Area, the STs constitute 53,34,871 persons accounting 57.90% (2001).

But till toady the Act has not been fully operationalised as all the existing acts and corresponding rules and regulations of the State have not been amended. The followings indicate a few gaps in the implementation of the PESA Act in Orissa State.

1. Mandatory provision in the Central Act ensuring tribal communities control over natural resources, granting licenses for minor minerals and their exploitation and acquisition of land by Government for development projects proposed to be enforced through Gram Sabhas have not been complied with.
2. The Gram Sabha operates at GP headquarters level instead of village/ community level. All meetings are presided over the Sarpanch. Importance has not been given to traditional chiefs and leaders in the matter of presiding the meeting and sharing with the important discussions.
3. 1/3<sup>rd</sup> female participation is absent in the Gram Sabha meetings. Women related issues are hardly discussed.
4. Most of the Gram Sabha members and some of the PRI representatives are unaware about the Act

and its provisions.

5. PESA Act has no provision of Palli Sabha' but in practice all the tribal settlements have formed Palli Sabha' either in the ward or in the village respectively. The Palli Sabha usually sits twice a year and their business revolves around taking decisions of infrastructure works and selection of labour leaders rather than income generating programmes and other issues. Most of the conflicts arise in the Palli Sabha/Grama Sabha over the distribution of Indira Awas Houses, selection of leaders for construction works etc.
6. The Orissa Money Lenders' Regulation 1967 (Regulation 2 of 1968) has been suitably amended by Regulation-I of 2001 keeping the provision of the PESA Act in view but the Gram Sabha has not exercised the power.
7. In practice, the Gram Sabha is not consulted in the matter of exercising institutions and functionaries in all social sectors. In actual practice the Gram Sabha had not played any significant role in restoring the unlawfully alienated land of STs in scheduled areas.
8. The Gram Panchayat but not the Gram Sabha exercises the power to enforce prohibition or restricting the sale or consumption of any intoxicants in the area.
9. Since the Gram Sabha is formed taking all the villages of GP comprising of different communities the ST people are yet to enjoy the customary mode of disputes resolution in their respective Gramsabhas.

To abridge the gap between the Central Act and its state version, the model guidelines on the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996 developed by



National Institute of Rural Development (NIRD) and the suggestions of Indian Law Institute, New Delhi may be critically examined before making further modifications in the existing rules and regulations of the State of Orissa. At this end some suggestions are:

1. A time-bound well structured training programmes should be organized for new PRIs representatives. The SCSTRTI and the SIRD, Bhubaneswar may jointly prepare modules for the training programmes and SSD Dept and PanchayatRaj Dept. should provide the required funds for organization of the training programmes.
2. The Gramsabha may be reconstituted at village community level taking all the registered voters of the Revenue village, its wards, padas and tribal settlements within its jurisdiction.
3. There is a need for preparing translations of resumes of all the acts and rules along with their modifications and guidelines relating to PESA Act in local and tribal languages. SIRD, SCSTRTI and ATDC may take the responsibility through combine effort.
4. Wide participation of women in decision-making needs to be encouraged through NGO intervention. Women SHGs be taken in to confidence and be assisted to create awareness among the women folk.
5. Gram Sabha should be conducted once in every quarter of a year in a democratic way without the intervention of the powerful moneylenders, leaders or politicians. There should be quorum in every meeting and the decision should be read out at the end of the meeting before obtaining the signature of the President and Secretary. All development issues should be discussed in the Gram

Sabha. The work order should be given to the SHG or Village Working Committee. The message of PESA covering the salient points through IEC activities (Cultural Team /Audio Video programmes in local languages should be circulated) and the WEO should remain in charge of management of IEC activities relating to PESA.

6. The Plans and development programmes of Government and NGOs should be incorporated in the block plan. All information regarding schemes, development work orders and Plan estimate, unit costs and provisions should be made available in Gram Panchayat Office.
7. A survey should be conducted with the help of a checklist by the WEOs/ Extension Officers of the Blocks in the Scheduled Areas so as to record the number of PSs, GPs, Villages, Gramsabhas, PRI representatives (Community wise), GS meetings etc. held during the last year and attendance their in of the functionaries. This will facilitate to draw a complete picture on the practice of PESA in the state.

The study reveals that the resources flow in Gramsabha in Schedule Areas and its ever-reaching powers and authority have generated some interest in the people. It needs to be retained, intensified and translated to a broad-based participative practice at grassroots level. The need of the hour is to address the issue of awareness generation among the tribal masses and utilize the capacities of their traditional leaders for the village development. The critical importance is sensitization and capacity building of the ST people and devolution of 3Fs-finance, function and functionaries to PRIs. This is expected to lead the ST people closer to the objectives of Gram Swaraj(Village Republic), the dreams of Gandhiji.



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**\* (J.P. Rout, Former Joint Director and T. Sahoo, Research Officer, SCSTRTI)**

## **THE FUTURE OF PESA**

**Prof. L. K. Mahapatra**

**&**

**Paramjyot Singh, M.A, LLM**

"The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity ..... that may be beyond us, but as long as there are tears and suffering, so long our work will not be over".

**Jawaharlal Nehru**

Based on the recommendation of the Bhuria Committee, the Panchayat Extension to Scheduled Areas (PESA) Act 1996 was enacted by Government of India to provide for extending the provisions of part IX of the Constitution relating to Panchayats in Schedule V areas. There can be no wisdom in the choice of path unless we know where it leads. The rules and principles of law have never been treated as final truths but as working hypothesis, continuously retested in social laboratories so that jurisprudential trajectories are realigned to root out the legal mischief and attempt actualizing the dynamically evolving needs of our society. The juridical scope is best epitomized in the latin maxim *boni judicis ert ampleau jurisdiction*, that law must keep pace with society to retain its relevance, for if the society moves on and law remains static, it is bad for both. The provisions of PESA Act 1996 needs to be analysed in the light of activist claims that it has miserably failed to materialize people-centric governance and accountability structures at the grassroot level thereby jeopardizing the very rationale of 73<sup>rd</sup> Amendment and the Panchayati Raj Institutional mechanism.



### **Critical Appraisal & Suggestions for Improvement – I**

Section 4(a) of PESA Act 1996 does not take into consideration the presence of multi-cultural contents of different tribes, even in the same geographical area. In consequence thereof, the words "customary law", "social and religious" practices and "traditional management practices" are general in nature. They are not tribe specific and therefore cannot be applied uniformly.

In the event of a dispute as to whether a particular state legislation is in consonance with customary law or not – there is no statutory provision for referral/redressal. The scope under Vth Schedule is severely constricted. This would eventually lead to judicial confrontation and defeat the very purpose of this legislation. Its progressive content is acutely checkmated by these ambiguous terms. The need, therefore, to amend this provision by creating viable mechanisms to accommodate diverse claims in multi-tribe situation in the same geographical area so that terms like "traditional management practices" do not lead to extreme situations of conflict and mutual distrust.

The definition of "village" vide Section 4(b) in Schedule V Area has been done in a uniform manner, expanding the scope for assimilation of new categories (i.e. not belonging to the same ethnic group). Such "village" units if created will dilute the spirit of the legislation. The same cannot claim to be in consonance with tribal customary law. The best course would be to recognize the existing units and in case of a conflict, allow the local level Panchayats to pass resolutions to resolve issues concerning definition (i.e. what constitutes a village) and jurisdiction. Such units, it is suggested, should be based on ethnic composition especially in Schedule V Areas.

While elaborating the need to make participatory democracy truly representative, Section 4(c) of PESA stipulated that every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls at the Panchayat level. This provision opens up the space for assimilation without



resolving the twin issues of universal territorial citizenship and the functioning of historical ecology of tribal moral community. It also does not address properly the issue of gender equity. A suggested amendment is spelt out below.

"Every Gram Sabha shall nominate ten members including women members, to the Executive Council of Karyakari Samiti from among the traditional and other leaders in the Gram Sabha and shall have the authority to replace any or all those nominated in case of unsatisfactory or unworthy activities".

Section 4(d) of PESA mentions 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 basic tents of the Constitution and human rights".

Under such provision each territorial unit becomes separate and segregated from its trans-territorial ethnic linkages making them susceptible to exploitative intrusion of external forces. Such a provision will also undermine, in the long run, collectivist opposition and make these isolated categories more pliable. The solution to this obviously lies in raising local consciousness about the plans and programmes so as to enable them to participate in development initiatives. Capacity building measures should be undertaken to make these communities "competent" and thereby live upto the expectation of the legislative intent behind enacting PESA Act.

Section 4(c) empowers the Gram Sabha to approve plans, programmes and projects for social and economic development. The Act is however silent on the issue of "disapproval" and does not mention any statutory mechanism to resolve such disputes at the Gram Sabha level. The Gram Sabha should have been empowered to prepare its own plan or should be given the choice of an alternative. The PESA Act is silent on such important parameters of local "Self-Government". The dominant



mind-set as reflected in the PESA Act speaks volumes about responsibilities but is hopelessly silent on rights. It seems the concept of "eminent domain" is here to stay.

Laws to be valid must display a minimal moral content. PESA Act tragically fails to achieve the espoused spirit of tribal self rule. It loses itself behind the maze of pedantic approach, successfully to be employed by a conservative bureaucratic mindset. It is important to note here that a study carried out by NIRD on Food Security in India showed that some of the important assumptions particularly relevant to tribal areas were wrong. It is hightime we recognize the need to realistically understand the tribal way of life while framing policy interventions to secure the Constitutional goal of social and economic justice.

While Section 4(f) of PESA Act empowers the Gram Sabha with issuing utilization certificate in respect of plans, programmes and projects in Section 4(e), however, it is silent on the role of the Convener. It also does not mention about the status of the Gram Sabha in respect of other agencies working within its territorial jurisdiction. It is suggested that all agencies should be brought under the monitoring and scanning function of the Gram Sabha so as to achieve the letter and spirit of Section 4(d) of PESA Act 1996.

It seems Section 4(g) was framed not taking into consideration the demographic profile of the tribal population occupying Schedule V Areas. Such omission can cause problems in the available political space, detrimental to tribal interests and would eventually cause them to lose control over traditional social management.

Similarly Section 49h) of PESA Act might open up the political space for manipulation by external vested interests. Rather local level accommodation of unrepresented communities achieved through local cooperation will lead to harmonious blending of interests amongst different communities and tribes.

Section 4(i) of PESA is significantly important because it provides for consultation before land acquisition in Scheduled Areas for development projects. It also covers the R&R process. Though the provision promises a "say" in the planning and implementation of development processes, it is pathetic to note that such efforts shall be coordinated at the state level. Can you call it tribal self-rule by any standard? This section speaks nothing about the role of Gram Sabha. In planning at the initial stage and therefore self-contradicts itself by going against the spirit of Section 4(d) of PESA Act. The need, therefore, is to weed out the internal inconsistencies.

The same incoherence is exhibited in Section 4(i) which provides that planning and management of minor water bodies in Scheduled Areas shall be "entrusted" to the Panchayats at the appropriate level. This Section stands opposed to Section 4(a) and Section 4(b) of PESA (i.e. traditional management practices of resources). The village moral community in Orissa has always been the custodian of these locally available water resources, more so in the tribal areas. This provision again reinstalls the state as the final arbiter of village level resources (see how eminent domain operates). The act of entrusting is also the act of 'legitimizing' state intrusion into traditional resource base. Such provision needs to be amended suitably to establish traditional rights over these resources, more so their being located in Schedule V Areas.

Section 4(k) of PESA empowers the Gram Sabha with making recommendations for prospecting license or mining lease for minor minerals in Schedule V Areas. The language of this provision is ambiguous and does not stipulate the mechanism where the Gram Sabha does not recommend prospecting for minor minerals within its jurisdiction. The appropriate work should have been "consent" and not "recommendation". The same is true of Section 4(1) of PESA.



In Orissa the current operating rules for minor minerals were formulated in 1990 and are called the Orissa Minor Mineral Concession Rules, 1990. The rules have not been modified to reflect the provisions of PESA. The Amendments have been made in the State Panchayat Acts. The State of Orissa has separate Acts to govern the different tiers of Panchayati Raj system viz. Orissa Zilla Parishad Act 1991 (District level); Orissa Panchayat Samiti Act 1959 (Block level); Orissa Gram Panchayat Act 1964 (village level). In addition to the above tiers, traditionally there is an additional tier in Orissa called the "Palli Sabha". This is the smallest unit of decision making in the traditional system and corresponds to the definition of "Gram" in the PESA Act 1996. The State Act on PESA has ignored this level and starts the process of self-determination and devolution of power from the Gram Panchayat. By doing this the state has effectively diluted the spirit of PESA Act.

The control and grant of prospecting license or mining lease for minor minerals or grant of "concession for the exploitation of minor minerals by auction" have been denied to the Gram Sabha in Orissa. It has been reserved for the Zilla parishad, though under PESA it should have started with the Gram Sabha. This right of the lowest tier should be restored through amendment.

Similarly the Zilla Parishad and not the Gram Sabha or Panchayat Samiti has been empowered to have the right of prior consultation in land acquisition for development projects or for resettling or rehabilitating persons affected by displacement. Therefore, the need to restore and empower the Gram Sabha as the appropriate level of consultation for any development or land acquisition initiatives to be provided for.

The GoI Executive Instruction mentioned that all Land Acquisition proposals for acquiring land in Schedule V Areas should include.



- (i) Gram Panchayat-wise Schedule of land proposed to be acquired.
- (ii) A separate letter of consent from each of the Gram Panchayat infavour of the proposed acquisition. This should be in the form of a written resolution of the Gram Sabha.
- (iii) In case Gram Sabha expresses a disagreement, a copy of the resolution showing the reasons of disagreement including alternative suggestions, if any, to be made by the Gram Sabha.

In the context of Orissa, PESA NEEDS TO BE AMENDED TO SEEK SPECIFIC CLARIFICATION ON WHAT Gram Sabha is and to elaborate the role of Palli Sabha. It is suggested that starting the consultation process at the Palli Sabha level can be more accommodative and equity based. The State PESA Act should be suitably amended to make the consent of Gram Sabha mandatory for major mineral also. The significance of Vth areas and the role of State in alienating land for developmental endeavours have been judicially explained in Samatha judgement of the Supreme Court. As per S. Saghir Ahmed J., "If the Government was allowed to transfer or dispose of its own land in favour of non-tribals it would completely destroy the legal and Constitutional fabric made to protect the Scheduled Tribes".

In Samatha judgement, the honourable Supreme Court maintained that the executive power of state is subject to legislative power under clause 5(1) of the Vth Schedule. sub-para 5(2) of the V, Schedule combines both legislative as well as executive power. Therefore, in view of para 5(2) of Vth Schedule there is implied prohibition on the State power of allotment of land to non-tribals in Schedule Areas.

Elaborating on the issues of tribal land alienation, Justice K. Ramaswamy remarked "The word regulate the allotment of land to members of the Scheduled Tribes in Schedule V Areas



by Clause 5(2) must be read as a whole to ensure regulation of the land only to and among the members of the Scheduled Tribes". The Samantha case has made the judicial position clear on such a complex issue. It is for us to move ahead with an open heart and mind.

In the light of expanding rights it is suggested that PESA be amended to reflect the following provision.

"Provided that the Gram Sabha and Panchayats concerned shall have the power to register their property rights over gone-pool and biotic and medicinal resources found in the local forests and wastelands as role beneficiaries, who shall be entitled to patents, legal rights and monetary benefits accruing out of the patents and rights leased to outside agencies".

The powers mentioned in the succeeding Section 4(m) of PESA Act 1996 promise much but deliver little. In fact conferment of all the powers mentioned in the above three sections of PESA Act requires a strong political will, resulting out of radical political resurgence. The same cannot be expected from the existing power elite and economic interests.

## **II. Further Thinking on PESA – L. K. Mahapatra**

At the National Seminar on Panchayati Raj: Retrospect and Prospect, held in March, 1997 by the Institute for Socio-Economic Development, Prof. L. K. Mahapatra had presided over the session on Panchayati Raj and Tribals and taken the initiative to draft the following recommendations by way of amendment to the Central Act 1996 (Panchayats Extension to Scheduled Areas):

- (i) The self-regulatory and judicial functions of the traditional Gram Sabha and its executive wing for implementing the decisions be provided under item (4) of the Act by adding sub-item (d) (1) as follows:

"Every Gram Sabha shall nominate ten members including women members, to the Executive Council or Karyakari Samiti

from among the traditional and other leaders in the Gram Sabha to carry out the decisions and functions of the Gram Sabha and shall have the authority to replace any or all of those nominated in case of unsatisfactory or unworthy activities". There shall be a Convener of the Executive Council to be elected by the Gram Sabha.

- (ii) Under item (4) and sub-item (i) by way of amendment to the Act, the sub-item (i) shall stand as follows:

"The Gram Sabha or the Panchayats at the appropriate level shall be consulted and their respective consent be obtained before making acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas, provided that the Gram Sabha, on behalf of the local community, be disbursed not only compensation for acquired resources on the basis of replacement cost of the common property resources, but also an adequate proportion of the benefits or gross profit as the first charge on the development project before distributing dividends or similar benefits to share holders and others; and the actual planning and implementation of the projects including the order and timing of displacement of the people be coordinated at the state level in consultation with Gram Sabha and the Panchayats at the appropriate level".

- (iii) Similar empowerment in favour of the Scheduled Tribes, may be extended in favour of other, more numerous, Panchayats of three levels outside the Scheduled Areas to put in brake on limitless, sometimes excessive, acquisition of land for development projects, displacing many more tribal families than necessary in the projects of the future.
- (iv) Under item (4) and Sub-section (m) and Sub-sub-item (vii) the following provision be inserted:



"Provided that the Gram Sabha and Panchayats concerned shall have the power to register their property rights over the gene-pool and biotic and medicinal resources (e.g. shrubs of medicinal value) found in the local forests and wastelands as sole beneficiaries, who shall be entitled to patents, legal rights and monetary benefits accruing out of the patents and rights, leased to outside agencies".

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## **PESA AND ROLE OF PANCHAYAT IN ORISSA**

**Saroj Kumar Dash**

Project Manager, Dakshyata  
SIRD, Bhubaneswar

Mahatma Gandhi had a vision of independent India as a federation of village republics. He, many a times, declared in different writings, "the soul of India lies in its villages, unless, they become the real republics or unit of their own governance, it is not possible to taste the real freedom the people of India envisage". Many of the Indian leaders in politics believed in the same way. This thought was also reflected in our national constitution. In Article 40, the chapter on Directive Principles of State Policy says that "State shall take steps to organize village panchayats and endow them with such powers and autonomy as may be necessary to enable them to function as units of self governance". This caused to create Gram Panchayats in all the States, but without much power and autonomy. They could not make any political dent to reflect the voices of poor rural communities.

Due to various reasons, the National Parliament amended the constitution (as 73<sup>rd</sup>, 74<sup>th</sup> amendment) in the year 1992, which made mandatory of setting panchayats in all States and UTs both in rural and urban areas. This amendment has created a great impact in reform of panchayats and made them as units of governance. But this form of the Central Act could not be adopted in many areas like the areas under fifth schedule, hence needed further clarification. The Act itself had already realized that and mentioned (Art. 243 MG(3)) that "Parliament may by law, extend the provisions to the Scheduled Areas and tribal areas, subject to such exceptions and modifications as may be specified in such



law". To this regard and movements of tribals across the nation, a committee was commissioned with the Chairmanship of D. S. Bhuria to recommend the required provisions in the tribal and scheduled areas. The process finally created further provisions in the Constitution titled as "the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996", popularly called PESA was enacted on 24<sup>th</sup> December, 1996. The Act further asked the State Legislature to amend their respective Panchyat Laws to confirm the Central Act with its spirit within one year of enactment of the Central Act.

During the mentioned period many States have made some amendment in their relevant laws. In Orissa, in the fag end of time given, on 21<sup>th</sup> and 22<sup>nd</sup> December, 1997, the acts relating to Gram Panchayat, Panchayat Samiti and Zilla Parishad were amended. The amendment in Orissa was not specific to scheduled areas but applicable to whole of the State.

The committee headed by Dillip Singh Bhuria had mentioned that as the tribal societies are mostly homogenous and monolithic, a participatory democracy constitutionally provided through Gram Sabha is very appropriate. Hence, the Gram Sabha should be fulcrum of the entire scheme of decentralized governance, planning and development in the tribal areas. But the provisions created by State amendment into various laws do not make much impact on to the process of its real extensions to tribal areas.

The Central Act had created to recognize the customary practices of rules of conflict resolution and the areas of tribal way of judiciary or their traditional rights. The amendment of Orissa Gram Panchayat Act 1964 said that customary mode of dispute resolution should be consistent with the "relevant law in force and in harmony with the tenets of the constitution and human rights". This implies that for any dispute resolution provisions of IPC and CrPC would be in force in the lives of tribal customary rules practiced by the respective tribal groups. Further, it could be seen in the similar way the tribal rights over natural resources like forest and land etc. The tribal ways of managing resources for their livelihood will be still commanded by the existing laws of forest

and land. The spirit of PESA was to non-interfere in the mode of life and livelihoods of tribals by existing laws. It is to create new laws for improving the livelihoods in their way of development understanding and wisdom with total control over their livelihood resources in their defined territories.

Many a times the customary way of resource used and management differs between different tribal communities. The Gonds, Kondhs, Bhuyans or Mankidias do not manage the forest and its resources in the same way. As per the Central Extension Act, planning and management of minor water bodies, minor minerals to be handled by Panchayats at appropriate level. In Orissa amendment Act, most of their roles are assigned to Zilla Parishad. This affects the tribal autonomy. In many places, while granting license for mining the Gram Sabha voice was unheard.

In the Central Act, vide clause 4 (M) the Panchayats in scheduled areas are to endowed with following powers and authorities and are required to ensure by the State Legislature that Panchayat at appropriate level and the Gram Sabha in particular shall be enabled to such power and authorities.

1. The power to enforce prohibition or to regulate or to restrict sale or consumption of any intoxicant.
2. The ownership of minor forest produces.
3. To prevent alienation of land to take appropriate action against unlawful alienation of land of tribals.
4. To control village markets.
5. To control over institutions and functionaries in social sector.
6. To control money lending activity.
7. To exercise control over plans and resources for such plans including tribal sub-plans.

In Orissa, contrary to Central Act, the power was vested with Gram Panchayats or Panchayat Samities. In this case the decisions made by them can be changed or rectified or received



by the District Collectors as and when required. Secondly, the Panchayat can not be empowered just by passing an act, if further amendments do not take place in relevant other laws affecting the function of Gram Panchayat as those rules are in force.

For example the Bihar and Orissa excise Act, 1915, Orissa (Scheduled Area) Money lending Act 1967, Orissa Forest Act 1972 etc. By the force of above Acts the authority is still vested with officials of concerned departments, on which the Panchayats do not have any control.

A detailed analysis of PESA in Orissa at this stage is limited to cosmetic changes in Panchayat Act without much devolution of power to the tribals to live their life in their way with their traditional dignity. It awaits to go miles for achieving the real spirits of Act and recommendations of Bhuria Committee. But it created a potential space and provision for change and to explore further action.

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## **CO-ORDINATION AND LINKAGES AMONG THREE TIERS OF PANCHAYAT INSTITUTION**

**Dr. H. P. Acharya**

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### **Introduction**

The 73<sup>rd</sup> Constitutional Amendment Act is a landmark in the development history of India, which has led to positive changes in local Governance. It has empowered Panchayat Raj Institutions to act as "Institutions of Self Government". Article 243-G of the Constitution of India, which deals with the crucial issues of powers, authority and responsibility of the Panchayats (3 tier of Panchayats) reads as: "Subject to the provision 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 threin, 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".

Panchayat laws of Orissa have been amendment consistent with provisions of 73<sup>rd</sup> amendment of the constitution. 73<sup>rd</sup> amendment was not applicable to the



Scheduled Areas. Provisions of Panchayats (Extension to Scheduled Areas) Act came into force w.e.f. 24.12.1996. Accordingly, Panchayat Acts of Orissa were modified in the year 1997. Section 3(3) of the Zilla Parishad Act, 1991 has since been amended. Steps were taken to incorporate similar provisions by amending the Orissa Panchayat Samiti Act, 1959 and the Orissa Gram Panchayat Act 1964 to enable the PRIs to function as Institutions of Self Government. In this context, sufficient freedom has been envisaged by the State Government to strengthen PRIs, through devolution of funds, functions and functionaries (3Fs) at appropriate level of PRIs and for empowering people in decision-making. The local governance initiatives have proved that Government services respond fast to the peoples' need and facilitated increased accountability on the part of the functionaries resulting responsible administration.

● **Profile of PRIs in Orissa:**

Sl. No.	Level	Post	Number	SC	ST	OBC	Women	Others (UR)
1.	Zilla Parishad	President	30	6	12	8	11	
		Vice-President	30					
2.	Panchayat Samiti	Members	854	152	205	NA	292	393
		Chairman	314	39	147	57		124
		Vice-Chairman	314					
		P.S. Members	6227	1009	1672	NA	2258	2857
3.	Gram Panchayat	Sarapanch	6234	792	2388		2213	2695
		Naib-Sarapanch	6234					
		Ward Member	87547	14354	21871	NA	30068	41906

- Function of Zilla Parishad, Panchayat Samiti & G.P.
- Development functionaries working at ZP, PS & GP level.

### Zilla Parishad

President

Vice-President

Collector-D.M. (Chief Executive Officer)

P.D.-DRDA (Executive Officer)

Addl. P.D. (Tech)

Addl. PD (Admn)

APD (Finance) (If OFS then he will be Addl. PD (Finance)	APD (Credit) (MIS)	APD (Scheme)	APD (GP)	APD (SGSY)	APD
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### Panchayat Samiti

Chairman

Vice-Chairman

BDO

ABDO

PA/ GPEO	SEO	WEO	SI of Sch- ools	IPO	CEO	FEO	Marketing Inspector Supply Inspector	Computer Progra- mmer	JES
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### Gram Panchayat

Sarapach

Naib-Sarapanch

VLW

VAW



As discussed earlier, as a first step towards developing planners the state Acts have been amended. The state of Orissa have taken the following important decisions to coordinate the process:

- a) 21 subjects of 11 departments have been transferred to Panchayati Raj Institutions.
- b) District level Officers, Block level Officers and village level functionaries of the said 11 departments will remain "accountable" to ZP, PS and GP respectively for implementation of subjects / schemes transferred to PRIs but they will also continue as the employees of their respective departments.
- c) The above three Government functionaries will attend meeting of ZP, PS and GP respectively.
- d) They shall place the schemes for discussion and approval in the meeting of the respective levels of PRIs.
- e) The President, Chairman and Sarapanch can supervise the work and function of the Government functionaries at respective level. They can call for information and report from time to time. They can submit proposal to appropriate level about indiscipline, irregularities and other shortcomings.
- f) President, ZP; Chairman PS; Sarapanch GP level has been delegated with the power to sanction casual leave of Head of the Office/ Institution of 11 departments working at the respective level.

### **Activity Mapping**

- In the process of devolution of power to the Panchayats, 21 subjects relating to 9 departments have already been devolved and activity mapping completed.
- Suitable instructions under the signature of Chief Secretary have been issued to the departments concerned for accountability at the appropriate level.
- Concerned departments have been moved for devolution of funds, functions and functionaries.
- Steps have been taken for opening of a separate bank

account in each GP for placement of funds directly released under the 12<sup>th</sup> Finance Commission awards.

### **Constitution of "Orissa Poverty Reduction Mission" (OPRM)**

Despite huge natural resources and long coastal bounty for livelihood, poverty is wide spread in the State of Orissa. A number of anti-poverty programmes have been launched in the past but those failed to curb poverty due to absence of end-to-end solutions, poor participation of the target groups and lack of proper coordination among various line departments. As per estimates of Planning Commission the percentage of population below the poverty line was 40.02 in rural areas and 42.03 in urban areas in 1999-2000. This gives the State the distinction of being one of the poorest States in the country.

Government of Orissa in PR Department has taken initiative to launch a poverty reduction project called Targeted Rural Initiative for Poverty Termination and Infrastructure (TRIPTI) with the assistance of World Bank.

For successful implementation of the project, government has established a mission known as "Orissa Poverty Reduction Mission" (OPRM) under the chairmanship of Chief Secretary and Chief Development Commissioner. There are 21 members consisting of various Department Heads, Bankers and the 4 Non-Government members. The management of affairs of the society shall be visited with the executive committee having 13 members and Commissioner-cum-Secretary as Chairman and Director TRIPTI as member Secretary.

### **Critical Analysis**

In spite of efforts made by Government there seems to be lack of coordination among various departments. Targeted population as well as implementing agencies do not have coordination as well as cooperation. They are to look awareness as well as skill. Hence capacity building of functionaries is of prime importance now. Funds are not provided in time. Action plans are not properly taken care of by the ZP submitted by Gram Sasan.

### **Suggestion**

Desired functions finance and functionaries in conformity with the Constitution have not been devolved on the Panchayats. The Constitutional amendment against PESA Act was brought in to force in view of the imperative need to ensure certain basic features of the



Panchayat Raj Institutions to compare certainty, continuity and strength to them. But it is revealed that certainty and continuity to a great extent have been imparted to PR system, but strength is still to be given to them. Hence there is need to empower the Panchayats functionally, financially and administratively.

We have a number of programmes / schemes for rural development both from center and State levels, considerable resources are being allotted to them. Both the officials and non-officials of the PR institutions as a powerful "Instruments" are to invest these sources in effective ways for a desired development of the areas. But the experiences gained so far revealed that even after a decade of functioning of Panchayats, both officials and non-officials do not discharge their roles as clarified at different levels. Hence, capacity building in terms of developing skill and competences of PR functionaries is urgently required in enabling them to play their roles effectively.

Besides, involvement of Central and State Government Institutions like NIRD & SIRD, involvement of competent and creditable Non-Government Organizations have scrub out the powers and functions of Panchayats. The conduct of business of the Panchayats have accepted the challenges of the day and of leadership which are found to be alive and kicking.

No doubt, the institution of *Gram Sabha* is the head and heart of the entire scheme of centralization, but with some expectations. The meeting of Gram Sabha is found to be a ritual. It should be made functional.

In addition to above, special arrangement for informal and formal education should be made to get sizable representations as needed.

Bottom up approach is required and practiced for effective implementations of the schemes and village level planning instead of the top-down approach.

Different departments may organize periodical review meetings and social audit for better coordination.

To conclude, if there is proper coordination among various departments, Panchayatiraj department would be able to deliver goods to the people for their economic development and social justices.

## **STATUS OF PESA IN ORISSA, JHARKHAND AND ANDHRA PRADESH\***

**Damodar Jena<sup>1</sup>**

Traditional and informal panchayats had existed in India since time immemorial. These panchayats have been the backbone of India since the beginning of the recorded history. Statutory panchayats came into being only during colonial rule. Father of the nation, Mahatma Gandhi had rightly remarked that "Indian independence must begin at the bottom and every village ought to be a republic or Panchayat having powers". This dream of Gandhiji became a reality when the framers of the Constitution accorded official recognition to panchayat by including it under the Directive Principles of State Policy in Article 40, which says "the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them as units of self government" (NIRD: 2001). It is also observed that, prior to the insertion of the part-IX\*\* in the Constitution through the 73rd and 74th Constitutional Amendment; the state governments were solely responsible for enacting laws, on panchayati raj and holding elections for these bodies.

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\* This paper is mostly based on the Report "Documentation of Efforts made by the State Governments and NGOs for Creating Awareness about the PESA in Scheduled V Areas of Orissa, Jharkhand and Andhra Pradesh", Institute for Socio-Economic Development, Bhubaneswar-30. The Report was submitted to the National Institute of Rural Development, Hyderabad. The author of this paper was one of the authors of the said Report, viz. Balaji Pandey, Damodar Jena and Jagabandhu Das.

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\*\* As per the Part-IX of the Constitution, a state legislation on panchayats shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources



These Panchayati Raj excitement subsided, almost all the state governments neglected the Panchayati Raj Institutions and did not hold elections on one pretext or the other for the ruling elite felt threatened by the emergence of alternative power centers at different levels. The 73rd Constitutional Amendment deals with panchayats and the 74th. Amendment deals with municipalities. Both these amendments were introduced to enable the people's participation in development plans and to strengthen democratic institutions at the grassroots level (Rao: unpublished).

The passage of the 73rd Amendment Act in 1992 marks a new era in the federal democratic set-up of the country and provides constitutional status to Panchayati Raj Institutions. After the enactment of the Act, all the states/UTs, except J&K, NCT Delhi and Arunachal Pradesh have enacted appropriate legislations. The 73rd Constitutional Amendment makes the following constitutional obligations on the part of state governments: (i) a three-tier system of Panchayati Raj for all the states having population of over 20 lakh; (ii) holding Panchayati Raj elections regularly once in five years; (iii) compulsory provision of 33 per cent reservation for the Scheduled Castes, Scheduled Tribes and women in panchayat elections; (iv) creation of an independent State Election Commissioner for conducting elections in a free and fair manner; (v) setting up of a finance commission at the state level to facilitate devolution of funds to the Panchayati Raj bodies; (vi) constituting district-planning committee to prepare draft development plan for the district as a whole; and (vii) identical conditions were also introduced in case of the 74 Amendment. As per the Constitution, Panchayati Raj Institutions have been endowed in the states with such powers and authority as may be necessary to enable them to function as institutions of self-government. The constitution contains provisions of devolution of powers and responsibilities upon panchayats at the appropriate level to enable them to prepare plans for economic development and social justice and the implementation of such schemes for economic development and social justice as may be entrusted to them.



### Bhuria Committee Recommendations on Extension of Panchayats to the Scheduled Areas.

As mentioned above, the 73rd and 74th Constitutional Amendments have excluded some areas from this purview. These included the Scheduled Areas, the tribal areas and the Hill areas of Manipur. The documents of the article 243 M (4) (b) of the 73rd Constitutional Amendment state that "Parliament may, by law, extend the provisions of this part to the Scheduled Areas and the Tribal Areas referred to in the clause (1) subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368", The article says "The provisions of the fifth schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any state other than the states of Assam, Mizoram, Meghalaya and Tripura". This is may be the first law, which was not automatically extended to the Scheduled Areas. The Act 243 M does not impose a three-tire structure on the Scheduled Areas but at the same time it does not prohibit the state legislature to put in place a similar structure in the Scheduled Areas also, as the legislative proficiency under entry 5, list II in respect of Scheduled Areas before and after the 73rd Constitutional Amendment remains unchanged (Srivastava: 1999).

What happened in reality is that the state governments did not take any cognizance of the exemptions provided for the article 243M and enacted panchayat laws for the entire state including the Scheduled Areas. Although the Governors of respective States could have made suitable changes in the State laws to the extent that they applied to Scheduled Areas, it was considered that such action will be in the direction to amendment of the Constitution in view of Article 243M. The parliament also did not initiate any action to make sure that the Constitutional Provisions were reflected in state laws. Therefore, agitations were launched in tribal areas. The matter



was taken to the Andhra Pradesh High Court. The high court, in its judgment delivered on March 23, 1995 held that the application of Andhra Pradesh Panchayati Raj Act 1994 to the Scheduled Areas in the state was clearly unconstitutional. Considering the growing discontent among tribals in different parts of the country and the judgment of the Andhra Pradesh High Court, the Ministry of Rural Development the Government of India constituted a committee of members of Parliament and experts with Shree Dillip Singh Bhuria, M.P. as Chairman on June 10, 1994 to suggest salient features of the law to be extended to the Scheduled Areas of the country (Sharma: 1997; Srivastava: 1999).

## I

### **PESA Act-1996**

The suggestions made by the committee have taken in to consideration different provisions of Fifth and Sixth schedules and 73rd Constitutional amendment. A special treatment has been given to the social, political, cultural and economic aspects of tribal life. The committee has taken note of the tribal areas that do not find a place either in the Fifth or Sixth Schedules of the Constitution. The recommendations of the Committee paved the way for drafting the Extension Act.

It can be said that any legislation on the panchayats for the tribal areas should be based on the basic premises of participative democracy and that it should be in consonance with the customary laws, social practices and traditional management of community resources. The recommendations of the Bhuria Committee paved the way for the passage of a comprehensive legislation, extending the provisions of the Constitution relating to the Panchayats in the Scheduled Areas. On this basis, a bill was introduced in the Parliament and passed on 19th December 1996 which was assented to by the President on 24th December 1996. The Act is called the Provisions of Panchayats Extension to the Scheduled Areas Act, 1996 (Central Act No.40 which envisages the establishment of the village panchayats as self-governing institutions) and to be referred as central Act.

The provisions of PESA envisage radical self-governance powers to the tribal committees and recognise their traditional community rights over natural resources. The Act provides that the tribal Gram Sabha would be empowered to prepare all development plans, control all functionaries and institutions of all social sectors, minor water bodies, minor minerals and non-timber forest resources. In addition, the act empowers Gram Sabha to control land alienation, impose prohibition, manage village markets and resolve internal disputes employing traditional modes of conflict resolution. In essence, the Act, if enforced sincerely, would empower tribal people to shape their own destiny. Proper implementation of the Act would considerably erode the power-base of the bureaucracy and politicians. Therefore, the amendments to the PRI Acts by the States have been designed to narrow the scope for empowering tribal committees.

## **II**

### **Issues Involved**

The following are the important issues involved with the PESA Act, which have been analysed in subsequent sections.

1. How far the provisions of the legislation have been put into practice?
2. What has been the acceptance of these provisions by the State Governments?
3. Are the panchayats operating genuinely as institutions of people's participation in local governance? Do the panchayats have any interface with the traditional local institutions and Civil Society Organisations?
4. What are the powers that have actually devolved to the panchayats? Are the panchayats aware of these powers?



5. How much are the panchayats aware of these powers, and to what extent they able to exercise them in the development process?
6. What is the level of awareness among people in tribal regions especially by women about these powers?
7. What are the impediments to the success of PESA? How do we overcome these impediments?

### **III**

#### **Important Aspects of State Acts**

There are nine states, which have Schedule V Areas. These are: Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Chhatisgarh and Rajasthan. All these states were given a period of one year to amend such provisions of their existing Panchyat Acts as contravened the provisions of the Central Act. Accordingly, the Government of Orissa amended the 'Orissa Gram Panchayats Act, 1964' on 22 December 1997, which is now called 'The Orissa Gram Panchayats (Amendment) Act, 1997'. Similarly, the Government of Andhra Pradesh amended 'The Andhra Pradesh Panchayat Raj Act, 1994' on 16th January 1998, which is called 'The Andhra Pradesh Panchayat Raj (Amendment) Act, 1998'. However, Jharkhand, which became a separate State on 15 November 2000, was able to amend the Panchayat Act only on 23 April 2001.

Though Orissa Government amended the PRI Act in December 1997; its guidelines were followed as recently as in the February 2002 PRI elections. Similarly, though PRI Act was amended in 1998 in Andhra Pradesh, its implementation was enforced in 2001 elections. Though the newly formed Jharkhand amended PRI Act in 2001; the State is yet to conduct PRI elections. However, the Government is making efforts to hold the elections, which was to be held in November 2000 but has been rescheduled for March 2003. A comparative picture of the

powers envisaged in the modified PESA Act of the above three states has been given in tabular form as below.

Sl	Items	Central Act	Orissa	Andhra Pradesh	Jharkhand
1.	Definition of village	A village consists of a habitation or a group of habitations or a hamlet or a group a of hamlets comprising a community and managing its affairs in accordance with traditions and customs.	Adopted this definition	Adopted this definition	Adopted this definition
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, 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.	The state Act follows the Central Act. However, regarding customary mode of disputes resolution, Andhra Pradesh Act puts a condition that it will be subject to without detriment to any law for the time being in force'.	
3	Constitution of 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 and Mandal /Intermediate Panchayats.	Extended the reservation of elective seats and Chairpersons to both Gram Panchayats and Mandal /Intermediate Panchayats.	Followed the Central Act. The State has also reserved the post of vice-chairperson at every stage.



4	Acquisition of Land for Development Projects and of displaced Persons.	Prior consultation with Gram Sabha or Panchayats at the appropriate level shall be made mandatory.	Assigned the power to Zilla Parishad with no role for the Gram Sabha/Gram Panchayat.	Gram Sabhas have no role; rather the power is given to Mandal Parishad.	Silent
5	Planning and Management Of Minor Water Bodies	Entrusted to Panchayats at the appropriate level.	Assigned power to Zilla Parishad instead of Gram Sabha /Gram Panchayat.	The power is given to all the stage in such manner as the case may be.	The power is given to all the stage in such manner as the case may be.
6	Grant of prospecting license or mining license or mining minerals.	Prior consultation with Gram Sabha or Panchayats at the appropriate level shall be made mandatory.	Gives powers to Zilla Parishad.	Gives the primacy to Gram Panchayat in place of Gram Sabha.	Silent
7	Grant of concession for exploitation of minor minerals by auction.	Panchayats will be constituted at the village level with reservation for Scheduled Tribes in the manner Prescribed in Part IX of the Constitution.	Assigned the power to Zilla Parishad.	Assigned the function to Gram Panchayat in place of Gram Sabha.	Silent
8	Enforce prohibition /regulate or restrict sale & consumption of any intoxicant	Every village will have a Gram Sabha which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity	Gram panchayat or Gram Sabha shall exercise the power	Gram Panchayat or Gram Sabha shall exercise the power	Zilla Parishad is supposed to look after the matter.
9	Ownership of Minor Forest Produce (MFP)	Panchayats at the appropriate level and the Grama Sabha endowed with the powers of ownership.	Followed the Central Act	Followed the Central Act	Followed the Central Act

10	Prevention & Restoration of Tribal Alienated Land.	Panchayats at appropriate level and the Grama Sabha to be endowed with this power.	Subject to the control and supervision of gram sasan. Gram panchayat will look into the matter	Gram panchayat or Gram Sabha would exercise the power.	The right is given only to Zilla Parishad.
11	Manage village Market	Panchayats at appropriate level and the Gram Sabha to be endowed with this power.	The gram panchayat, subject to control and supervision of the gram sasan, shall have the power to manage the village market.	Gram panchayat or gram sabha shall exercise the power.	The right is given to all the tiers of panchayats.
12	Money lending to the Scheduled Tribes	Panchayats at the appropriate level and the Gram Sabha to be endowed with this power.	Followed the Central Act	Followed the Central Act	The power is given to Zilla Parishad
13	Exercise control over institutions & functionaries in all social sectors	Panchayats at the appropriate level or the Gram Sabha to be endowed with this power.	The Panchayat Samiti shall exercise the power in consultation with the gram sasan.	The power is given to Mandal Parishad.	The power is given to Zilla Parishad sectors.
14	Control over local plans and resources including tribal sub-plans.	Panchayats at appropriate level and the Gram Sabha to be endowed with this power.	Assigned the power to Panchayat Samiti	Assigned the power to Mandal Parishad.	Assigned to all the tiers of Panchayat.



## **Orissa**

1. Acquisition of Land: The Central Act Provisions (section I) states that a Gram Sabha or a Panchayat's consent is mandatory in the case of land acquisition for the establishment of development projects in Scheduled Areas. But, in case of Orissa, the Act assigns the power of consultation to the Zilla Parishad. Therefore, in this matter, the state Act has deviated from the Central Act.
2. Grant of Prospecting License or Mining Lease for Minor Minerals: The Central Act (Section K) has provided that the recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to the grant of prospecting license or mining lease for minor minerals in the Scheduled Areas. In case of Orissa, the power is bestowed on the Zilla Parishad. Similarly, in case of grant of concession for the exploitation of minor minerals also the State Act has assigned the recommendatory power to the Zilla Parishad whereas the Central Act mentions the need for prior recommendation of the Gram Sabha or Panchayats in this regard.
3. In case of the planning and management of minor water bodies, too, the state Act has given the power to the Zilla Parishad, whereas the Central Act has assigned the task to the panchayats at the appropriate level (Section-1).
4. With regard to the powers over institutions, functionaries in all the social sectors, the state Act gives the power to the Panchayat Samiti. It is mentioned that the Panchayat Samiti, in consultation with the Gram Sabha in the Scheduled

Areas would be competent to exercise control and supervision over institution and functionaries of various social sectors in relation to programmes and welfare measures. However, the nature and extent of control is to be clearly specified by the State Government.

5. As far as the control over local plans, resources including the Tribal Sub- plan is concerned, the Orissa Act has mentioned that the Panchayat Samiti in consultation with the Gram Sasan shall be competent to prepare local plans including the Tribal Sub-plans for the area and to exercise control over the resources for such plans.
6. In case of the Planning and Management of the water bodies, the Orissa Act has assigned the task to the Zilla Parishad. Whereas it would have been easier for the Gram Sabha to look into the matter as it would be difficult for a body like Zilla Parishad which itself is a big unit to manage large number of water bodies that exists in the lower level?

Lastly, it is observed that, there is an important provision in the Central Act, 40 which says that the State legislature "to endeavor to follow the pattern of the Sixth Schedule of the Constitution while designing the administrative arrangement at district levels in the Scheduled Areas. Instead of taking into account this provision, the Orissa Government has enacted necessary amendments in Panchayati Raj laws that would bring different ways to change the subject laws (Annamalai: 2001).

### **Andhra Pradesh**

Like Orissa, in Andhra Pradesh too, the State Act is in many ways differ from the Central Act. To put it more clearly, it could be said that the Central Act is not taken up properly in the State Act, as it has not understood the spirit of the Central



Act in an expected manner. Though in the above mentioned table the variation between the State Act and the Central Act is mentioned, still some of the important among them are mentioned below. In the state Act too some aspects of power and functions with regard to the subjects are not clearly mentioned which gives ample scope for narrowing down of the scope of the Central Act.

- 1 With regard to the Land Acquisition Act, the Central Act has mentioned that the prior consultation of the Gram Sabha or Panchayat at the appropriate level is necessary. But in the State Act Gram Sabha has been assigned no role and the power is given to the Mandal Parishad.
- 2 In case of grant of prospecting license or mining license or mining minerals and the grant of concession for exploitation of minor minerals through auction, the State Act assigned the function to Gram Panchayat in place of Gram Sabha. This leads one to feel that the State Act does not reflect the intention of the Central Act.
- 3 While working on the issue of exercising control over institutions and functionaries in all social sectors, the State Act has given the power to Mandal Parishad.
- 4 As far as control over local plans and resources including Tribal Sub-Plans is concerned, the Andhra Pradesh State Act has assigned the power to Mandal Parishad. This shows that in some of the important matters, the Gram Sabha is not taken into account.

### **Jharkhand**

The new Act, from the beginning, is facing a lot of problems at two levels i.e. at the level of policy and at the

level of implementation. There are some serious policy level problems in Jharkhand Panchayat Raj Act (JPRA), 2001. An empirical study by Ekka and Singh (cited in Kujur: 2002) reveals that "contrary to a few positive elements in the Jharkhand Act there are many provisions "incompatible and irreconcilable with the Central Act". They are:

- 1 In the Jharkhand Act there is no provision for electing women to the post of president.
- 2 The reservation of the post of the vice president only for the tribals prevents other non-tribals and other weaker sections from occupying the post.
- 3 The post of the president and vice-president are kept in the non-scheduled areas, which runs counter to the article 243(c) of the 73rd Constitutional Amendment, according to which the position of the president has to be in proportion with the population.
- 4 There is no mention in the Jharkhand Act about the Gram Sabha or the Gram Panchayat being consulted regarding the acquisition of land in the Scheduled Areas for development projects as stipulated in the Central Act.
- 5 There is no mention of the recommendation of the Gram Sabha or the Panchayats prior to granting prospecting license or mining lease for minor minerals in the Scheduled Areas as prescribed in the Central Act.
- 6 In the Act, there is no provision to enforce prohibition or regulation of the sale and consumption of intoxicants and stipulated in the Central Act.
- 7 The State Act does not mention the power of the Gram Sabha and the panchyats of preventing land alienation in the Scheduled Areas and of taking



appropriate action to restore to its owner any unlawfully alienated land belonging to the Scheduled Tribe, as stipulated in the Central Act. The Jharkhand Act gives only supervisory power to the Zilla Parishad in this regard.

- 8 The Act contains no provision relating to the power of the Gram Sabha and the Panchayats to exercise control over lending money to Scheduled Tribes, as stipulated in the Central Act.
- 9 The Jharkhand Act has no provision of giving to the power of ownership over Minor Forest produce, it contains only a provision for the conservation and management of forest produce.

When the Jharkhand Panchayat Raj Act, 2001 is compared with the PESA Act, 1996, one finds that the spirit of self-rule has been diluted thoroughly. Bureaucratic control of the institutions continues. Because of the above-mentioned lacunae in the Jharkhand State Act, a Public Interest Litigation (PIL) has already been filed in the Ranchi High Court by an Ex-M.L.A. of Chaibasa (West Singhbhum). In addition to the above mentioned limitations in the law, the PIL has also mentioned that within the district of West Singhbhum and its villages the "Manki", "Munda" system is prevalent and is customary in nature. The "Munda" is the head of the village and has various powers including those relating to administration and collection of revenue. Similarly, the "Manki" is the head of the "Pir" consisting of 10 to 15 villages who also enjoys some important powers. The PIL says that the Jharkhand Panchayat Act has not defined the powers of the customary heads of the villages, such as "Munda and Manki". The only power that the Act has given to the traditional head is to preside over meetings of the Gram Sabhas. With respect to restoration of the alienated tribal land, no stringent laws are enacted. On the other hand, there is an unwarranted flexibility at the cost of the authority of the Gram Sabha.

Lastly, one must admit that after a long time, an Act has been passed to safeguard the interest of the tribals. However, it would yield few benefits if the real spirit of the new Act is misunderstood or if it is not implemented properly. If the intention of the PESA Act is not taken into account, the Act would remain but a dead letter. In order to have an effective law, awareness and capacity building among the tribes must be undertaken.

### **Limitations of PESA**

The new Panchayat Act is applicable only to the Fifth Schedule Area and does not cover the Sixth Schedule. In India, there are some areas, which do not fall in both the Schedule Areas. Therefore, in such cases tribal cannot get the benefit of the new Act. This Act does not take into account the sixth Schedule Areas. In the Sixth Schedule, the structure of autonomous district area is not necessarily co-terminus with the administrative district boundaries. They do not have a statutory body below it, that is, either at the intermediate level (block level) or at the village level. There are places at the sub-district level where there is neither a democratic nor a traditional structure. As a result, a void is created at the grassroot level and in the absence of such grassroots structure; no organic link connects the lower and the higher-level bodies.

The Central Act stipulates that, while making necessary modifications in the State Acts, care should be taken to ensure that the present law shall be in consonance with the customary law, social and religious practices etc. However, these are characterised by variations and differ from one tribe to another in a State. It will be therefore difficult to cover all types of tribal practices in one legislation. On the top of it all, the customary laws have not been properly codified and documented.

In the Act, the village has been defined as a habitation or a group of habitations comprising a community. It means



that every community will have a separate village. Several communities may be living in one village and it may therefore be difficult to demarcate a village. In such a situation the revenue village may not be co-terminus with a village like this. On the other hand, the term community is not properly defined and it may lead to various complications and confusion. Generally speaking, in tribal areas, hamlets are more common than big villages. And that is why declaring each hamlet as Panchayat may not be a rational decision as economic viability and other aspects have to be looked into.

#### **IV**

#### **Objective, Coverage and Methodology**

The overall objective of this paper is to study the impact of the PESA Act by analyzing the level of awareness among people in general and particularly women Gram Sabha members, elected representatives of Panchayati Raj Institutions (PRI) (first two tiers) and the concerned officials.

The study has covered three states: Orissa, Andhra Pradesh and Jharkhand. Three tribal dominated and bordering districts, which have been declared Scheduled V areas, have been selected from each of the three States. Besides, collective efforts by tribals to protect their livelihood sources and tribals' self-governance movement in the past have also been taken into consideration while selecting the districts. Then three ITDP blocks/mandals from each district have been selected. Out of these three blocks/mandals selected purposively, one is dominated by primitive tribes, another is influenced by urban centres and the third is located near a forest and is a remote area. Four Gram Panchayats from each sample block have been selected at random for purposes of the study. In this way, three districts, nine ITDP blocks/mandals and 36 Gram Panchayats from each sample State have been selected. Similarly, a total of 149 villages from Orissa, 118 villages from Andhra Pradesh and 52

villages from Jharkhand have also been covered under the study.

The sample blocks/mandals of each State have been grouped into three regions, viz., Region-I, Region-II and Region-III for the sake of analysis. Region-I includes the blocks/mandals dominated by primitive tribes. Region-II includes blocks influenced by urban centers. Similarly, Region-III includes blocks located near forests and those which being to remote areas.

The present study has covered seven categories of respondents viz. Gram Sabha member, Ward Member, Sarpanch, Samiti Member/MPTC, Chairpersons/MPP, NGO functionaries and government officials from the sample areas.

All the Sarpanchs and Samiti Members/MPTC from the sample Gram Panchayats have been selected as respondents. Similarly, all the Chairpersons from the sample blocks/mandals have also been selected as respondents of the study. Besides, four Ward Members and an equal number of Gram Sabha members of whom 50 per cent are women have been selected at random for purpose of the study. It is to be noted that since Panchayat election has not been conducted in Jharkhand, only Gram Sabha members have been selected as respondent for the study. In this way, the study has covered a total number of 1088 sample respondents including 367 in Orissa, 361 in Andhra Pradesh and 360 in Jharkhand, Besides, the government functionaries concerned and NGOs working on the Panchayat and tribal issues in the study area have also been selected as respondents for this study. Responses from a number of primary stakeholders have also been duly recorded through group discussions in the study.

The study was basically exploratory in nature. It was based on both primary and secondary sources of information. Primary information has been collected through a set of structured interview schedules.



## **Major Findings**

### **Orissa:**

#### **Functioning of Gram Sabha**

Almost all the respondents, irrespective of the categories they belong to, have stated that they have Gram Sabha (GS) in their respective Gram Panchayats (GP). In fact, almost all GPs in the State have GS as Panchayat elections; have been held more or less regularly, since 73rd Constitutional Amendment. However, around three fourth of the total number of respondents have reported that only the following provisions of GS in fact, has been exercised: (i) discussing and approving socio-economic development plans/programmes and projects of villages; (ii) identifying beneficiaries for different development programmes; and (iii) control over communal/ forest land.

This response, particularly among the sample GS members, is less enthusiastic as compared to that among PRI members. Moreover, the overall functioning of GS in the Region-I (dominated by primitive tribes) and in the Region-III (remote/ forest areas) is comparatively lower (with urban influence). On the other hand, GS/GP 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 this: (i) exercising control over Minor Forest Produce; and (ii) controlling private money lending operations in villages.

#### **Attendance and participation in GS**

Around 20 per cent of the total number of respondents has not attended GS during the last one year. The extent of non-attendance is much higher (almost 50 per cent) among the GS members. Female attendance is found to be lower than that of males. Particularly among the GS members, non-attendance by females is much higher: around 60 per cent. It

may be due to the fact that (i) most of them have no idea about the GS; (ii) they engage themselves in economic activities elsewhere; (iii) timings of GS meeting do not fit in with the leisure time available to women; (iv) lack of information and awareness. However, it has been observed that most of the respondents, particularly GS members do not participate in GS meetings and this may be due to the fact that they do not have the ability to interact with others.

### ***Efforts Made for Creating Awareness***

Vigorous efforts made either by Government or by NGOs for creating awareness about the Act in the State are conspicuous by their absence. However, recently the SIRD, Bhubaneswar has initiated the process of creating awareness through training programmes i.e., 'Training of Trainers' for the 'District Level Trainers' Team consisting of Project Director and Additional Project Directors of DRDA, District Panchayat Officer and two NGOs from each district. On the other hand, a few NGOs e.g. 'DISHA' at Bisra, 'SGUP' at Lahunipada, 'PRAGATF' at Lefripada, 'Aragamme' at Kasipur, and 'CYSD' and 'RCDC' at Bhubaneswar have conducted training programmes for elected PRI members and GS members to make them aware about the powers and function of PRIs, where PESA is part of it. But overall it has been observed during the field survey that the level of awareness among the respondents as well as PRI members is found to be very low. It therefore becomes clear that whatever efforts have been initiated is not sufficient to create mass awareness.

### ***Level of Awareness on PESA Act***

Out of the total number of respondents, only 6.54 per cent have an overall knowledge of the Act. Interestingly, the level of awareness (in terms of percentage of respondents having the knowledge) of the Act is lower (6.38 per cent) among



the Scheduled Tribe (ST) respondents, for whom, the Act is meant, as compared to that among Non-ST respondents (7.25 per cent). Moreover, among ST respondents, this level is comparatively lower on the part of primitive tribe respondents. Again, region-wise, the level of awareness among the GS members is observed to be lower in the Region-I than that in the Region-II.

Unfortunately, among the categories of respondents, the level of awareness among the GS members is less than one per cent. In other words, the level of ignorance with respect to the PESA Act among the sample GS members is almost 100 per cent. However, the level of awareness is so low that it is not easy to work out the reasons for variation either among, the social groups or among the regions or gender groups.

It has been observed that there is no close relationship between the level of education, the nature of occupation and the level of awareness on the Act. With respect to the specific powers/ provisions of GS, it is found that, except a few, all other powers of GS are known to around three fourths of these respondents, who have an overall knowledge of the Act.

Near about two-thirds of these respondents came to know about the Act through different GP/block meetings, while the remaining one-third came to know about the Act through interaction with different NGO functionaries.

Regarding knowledge of official visits made by Government functionaries, it is observed that around 64 per cent of the total number of respondents has no idea about the visits of VLWs, EOs and BDOs. This level of ignorance is seemed to be much higher among the GS members.

### **Andhra Pradesh:**

#### **Functioning of Gram Sabha**

Unlike Orissa, around 21 per cent of the total number of

respondents has reported that they do not have any idea about the existence of GS in their GPs. Besides, around four per cent of the respondents said that GS had not existed in their GPs. Almost all the respondents have reported that, except a few provisions, GS in fact has not been exercising its power. However, 53.18 per cent of the total number of respondents has reported that GS has been discussing and approving socio-economic development plans/programmes and projects for villages. Category-wise, this share is as low as 21.52 per cent among GS members.

Region-wise, comparatively fewer respondents from the Region-I displayed an awareness of the above mentioned function of GS. Gender-wise, lower percentage of female respondents has referred to the above mentioned function of GS as compared to that of males. Similarly, only one fifth of the total number of respondents said that GS had been functioning in identifying beneficiaries for different development programmes. This share, particularly among GS members is as low as 6.25 per cent. More than 84 per cent of respondents reported that the decisions have not been implemented by GPs.

### ***Attendance and Participation in GS***

More than 10 per cent of the total number of respondents has reported that they have not attended the GS meetings during the last one year. This is around 27 per cent particularly among GS members. Gender-wise, more or less an equal percentage of males and females are attending GS meetings. Unfortunately, only two of 217 PRI respondents have reported that GS members are participating actively in meetings and exercising the powers conferred on them by the Act. However, around 21 per cent of the female PRI respondents said that they participated actively in meetings. Similarly, 19 per cent of the female PRI respondents said that they have the confidence to interact with officials.



***Efforts Made for Creating Awareness***

It is unfortunate that none of the Government agencies and or functionaries have made any exclusive effort for creating awareness. Moreover, it has been observed that the Act has not been clearly understood by most of the officials concerned, who are supposed to execute the Act. On the other hand, initiatives by NGOs are rather negligible. However, NGOs viz., SAMATA Hyderabad, TERDs of Dumbriguda and Adibasi Mitra of Paderu have initiated the process of making people aware with regard to the mining and tribal land issues of the Act.

***Level of Awareness on PESA Act***

Unlike Orissa, around 57 per cent of the total number of respondents has an overall knowledge of the Act. The level of awareness (in terms of percentage of respondents having this knowledge) on the Act is comparatively lower among non-ST respondents. Moreover, among ST respondents, this share is comparatively lower among the primitive tribe respondents. Again, region-wise, like Orissa, the level of awareness is observed to be lower in Region-I and Region-III than in Region-II. Category-wise, the level of awareness is as low as 28 per cent among the GS members. It indicates that around 72 per cent of GS members do not have any idea about the Act.

Almost all of those respondents, who have an overall knowledge of the Act, are aware of the following two specific powers of GS: (i) discussing and approving the socio-economic development plans/programmes projects for villages; and (ii) identifying beneficiaries for different poverty alleviation programmes. It is to be noted that these two powers had been assigned to GS by 73rd Constitutional Amendment before the enactment of the PESA Act.

It is found that only around six per cent of those respondents, who are aware of the Act, know of the following

powers of GS/GP: it has to be consulted while acquiring any private/communal land for rehabilitation programmes by Government. Unfortunately, this share is only 3.12 per cent among the sample Sarapanches.

Similarly, it is observed that none of the sample Sarapanches and MPP is aware of the following power of GS: i.e. recommendation of GS is necessary for issuing license or mining lease for minor minerals. The level of awareness is very low (around three per cent) with respect to the following powers of GS: (i) to control the manufacture/ consumption or sale of intoxicants; and (ii) to prevent tribal land alienation and restore the alienated land. On the other hand, almost none of the respondents have knowledge of the following powers of GS/GP: (i) to own and control minor forest produce (ii) to manage village markets (iii) to control money lending (iv) to plan and manage common property resources, particularly minor water bodies and (v) to exercise control over institutions in the social sector. Like Orissa, no efforts have been made for creating awareness on the Act in the State. As far as sources of information are concerned, out of those who have an overall knowledge of the Act, around 62 per cent came to know about the Act through reading GP manuals and other related references and through discussions with others. The remaining four per cent of respondents received information through NGOs.

It is observed that a very few of the respondents, particularly the GS members, have any idea about the official visits of the Government functionaries to their villages. Similarly, around three-fourths of the sample PRI members do not know the rules and procedures of working of the GP.

### **Jharkhand:**

As mentioned earlier, panchayat elections have not been held in Jharkhand even when it was part of undivided Bihar for the last two decades. GS therefore has not been set up in the



State. Rather, there has been an Aam Sabha (AS) in each village. The AS meeting is convened by block level officials (BDO/VLW) as and when they require people's participation for implementing various development programmes.

### ***Functioning of Aam Sabha***

Out of the total number of respondents only around four per cent have reported that they have Aam Sabha (AS) in their villages. Like in the other two States, a comparatively larger number of non-ST respondents said that they had AS in their villages. Their number is so negligible that it is difficult to analyze the functions of AS. Rather, it shows that overall AS has not been effectively functioning in the State.

### ***Efforts Made for Creating Awareness***

Like in Andhra Pradesh, none of the Government institutions or functionaries has made any effort for creating awareness on the PESA Act. On the other hand, unlike Orissa and Andhra Pradesh, comparatively larger number of NGOs have initiated the process of creating awareness on the Act. But it has been observed that the initiatives taken by NGOs are not very effective as the level of awareness among the respondents is found to be much lower.

### ***Level of Awareness on PESA Act***

It is unfortunate that about 99 per cent of the respondents have no idea about the Act. Similarly around 85 per cent of them do not know about the official visits of Government functionaries particularly VLWs.

### ***Conclusion***

Since the study has found ignorance about PESA among most of the officials concerned, there is an urgent need to make them aware of the various provisions of the Act. In addition, serious efforts are called for to sensitise them to the

tribal ethos, thus enabling them to perform their duties with utmost sincerity and sympathy. The following strategies are suggested:

Focus on the need to implement PESA in letter and spirit, awareness building-training for all functionaries concerned specially those who interact directly with people, such as VLWs, Gram Panchayat Secretaries, Gram Panchayat Extension Officers and District Panchayat Officers, and regular monitoring of their performance in the field.

NGOs engaged in tribal development activities in the Schedule-V areas need to acquire a proper understanding of various provisions of PESA so that they would be able to facilitate Gram Sabha meeting in accordance with the guideline of PESA.

Initiating a sustained campaign using the mass media, both print and electronic, for popularising PESA among peoples, especially the tribal communities constitute another important strategy. Cultural troupes should also be encouraged to take part in this campaign.

Since the study found a total absence of learning materials in local language explaining various provisions of PESA, preparation of such material and their wider dissemination is an immediate requirement.

Efforts should be made for making use of special events such as fairs or festivals in Schedule-V areas for launching campaigns aiming at building awareness on PESA among the masses.

Community leaders must be encouraged to play a leading role in popularizing the Act and strengthening Gram Sabhas.

A two-way interaction involving key Government functionaries at the block and district levels, and community leaders needs to be facilitated in order to build up an environment conducive to learning and working together.



A consortium of academic and training institutions, Government functionaries and NGOs working on PRIs should be promoted. They should review from time to time efforts made by various institutions at awareness building among the functionaries and people.

Networking among NGOs and grassroots workers in Schedule Areas would lead to exchange of ideas and strengthening of capacities. This will facilitate proper implementation of the Act.

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## **GRAM SABHA AND CONFLICT RESOLUTION MECHANISM**

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(OSPP)

**Laws, in whatever means, were originally designed, to protect the poor and weak against the oppression of the rich and powerful as a social control mechanism.**

### **Introduction**

The basic provisions of PESA were aimed at facilitating participatory democracy in tribal areas by empowering Gram Sabha to manage and control its own resources. The Gram Sabha was given special functional powers and responsibilities to ensure effective participation of tribal communities in their own development in harmony with their culture so as to preserve/ conserve their traditional rights over natural resources in accordance with their customary laws.

The act restored primary control natural resources including land, water, forest and minerals and bestowed ownership rights over minor forest produces to the Gram Sabha.

The 73rd constitutional Amendment act 1993 could not be extended to the tribal areas and the local self governance in tribal areas must be in consonance with their culture, tradition, custom and need as per the Constitution. To examine the issues arising out of extension of part IX of the constitution to tribal areas, the Government of India appointed a Commission of Parliamentarians and experts under the Chairmanship of Dillip Singh Bhuria in June 1994. Based on the recommendation of the committee, the PESA



was made in 1996. The act has extended the 73<sup>rd</sup> Constitutional Amendment to all the tribal areas mentioned under clause 1 of the Article 24 of the Constitution. All the States all the States which had Scheduled Areas within their areas geographical limitaitons had to amend the existing Panchayat raj acts incorporating the provisions of PESA with a period of one year, by 24<sup>th</sup> December 1997.

The present scenario says that

- 43,580 cases pending in Supreme Court as on 30<sup>th</sup> of June 2007
- 36,78,043 cases pending in 21 High Courts as on 31<sup>st</sup> March 2007
- Two crores 49 lakhs 56 thousands and 909 cases pending in Sub-Ordinate Courts as on 31<sup>st</sup> of March 2007
- Requirement of judges – 50 judges for 10 lakh population
- The Chief Justice of India says – The people are loosing faith on courts for inordinate delay in decisions
- Orissa Gazzate No. 2278 December 12, 2002 Notification 5<sup>th</sup> December, 2002.

Point-11- provident that no of persons who is the relative of a women member shall be allowed to participate in the meetings or interfere in the day to day business of the Gram Panchayat.

### **Panchayat and Scheduled Areas**

**Scheduled Area:** The area mentioned under 5<sup>th</sup> and 6<sup>th</sup> Schedule of the Constitution come under the Scheduled Areas.

Criteria taken to consider the area as Schedule Areas

- Socio Economic Status of the People

- Size of Adivasi Population
- Cultural Identity
- Remoteness, in accessibility

As per the Thakkar Commission Report there are three types of areas like:

- Tribal Areas
  - Excluded Areas
  - Partially Excluded Areas
- Both the excluded and partially excluded come under the purview of Agency Area. Again partially excluded area comes under 6<sup>th</sup> Schedule of the Constitution.
  - 9 states, namely, Orissa, Jharkhand, Andhra Pradesh, Madhya Pradesh, Chhatisgarh, Maharashtra, Gujarat, Himachal Pradesh and Rajasthan which are listed under the 5<sup>th</sup> Scheduled Area of the Constitution.
  - The whole district, a part of the district entire block or a part of the block can be declared as Scheduled Area.
  - The Scheduled Areas in Orissa are Mayurbhanj, Sundergarh, Koraput (which now includes the districts of Koraput, Malkangiri, Nabarangpur and Rayagada), Kuchinda tahasil of Sambalpur district, Keonjhar, Telkoi, Champua, Barbil tahasils of Keonjhar district, Kandhamal, Baliguda and G. Udayagiri tahasil of Kandhamal district, R. Udaygiri tahasil, Gumma and Rayagada block of Parlakhemundi tahasil in Paralakhemundi Sub-division and Suruda tahasil (excluding Gazalbadi and Gochha Gram Panchayats), of Ghumsar sub-division in Ganjam district, Thuamul Rampur and



Lanjigarh blocks of Kalahandi district and Nilagiri block of Balasore district as Scheduled Areas of the State. After reorganization of districts in the State, 7 districts fully and 6 districts partly are covered under the Scheduled Areas of the State.

### **Historical Perspective of Scheduled Area**

- Schedule Districts Act, 1874
- Montague-Chelmsford Report
- Government of India Act, 1919 – Wholly Excluded & Modified Exclusion
- Government of India Act, 1935, Backward areas were classified as excluded areas and partially excluded areas; tribal areas
- Cabinet Mission Statement of 1946
- Advisory Committee under the Constituent Assembly
- Thakkar Committee

### **Historical Perspective of the Panchayats**

- Local affairs continued to be regulated by such Panchayats even in the Mughal Period
- Gandhian village republic as the basis of whole Constitution
- Article 40 in the Constitution of India – A sop?
- Meheta Committees
- G.V.K. Rao Committee
- Singhvi Committee, 1986
- 73<sup>rd</sup> Constitution Amendment, 1992
- Andhra Judgement
- Bhuriya Committee
- PESA, 1996

## **PESA**

- Panchayati Raj System granted Constitutional status through 73<sup>rd</sup> Amendment Act, in 1992
- The system of Panchayats Extended to the Scheduled Areas through the Provisions of Panchayat (Extension to Scheduled Areas) Act 1996 (PESA)
- One year was given to every scheduled State to bring amendment in their act. But only two Scheduled states namely Rajasthan and Jharkhand changed their law in 1991 and 2001 respectively.
- The PESA's attempt is to vest legislative powers in Gram Sabha specifically in areas relating to
  - (i) Development Planning,
  - (ii) Management of Natural Resources and
  - (iii) Adjudication of disputes in accordance with prevalent traditions and customs

## **Fundamental Principles**

- o State legislations on Panchayats shall be in consonance with customary laws, social and religious practices and traditional management practices of community resources.
- o The competence of Gram Sabha in safeguarding and preserving traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution.
- o Definition of village itself, which shall ordinarily consist of a habitation (group of habitations), hamlet (group of hamlets) comprising a community and managing its affairs in accordance with traditions and customs.



**Those powers that have been vested exclusively with the Gram Sabha:**

- o The approval of the developmental plans, programmes and projects for social and economic development.
- o Identification or selection of beneficiaries for poverty alleviation and other programmes.
- o The granting of certificate of utilization of funds for plans, programmes and projects that are implemented by the Panchayat.

**Those powers that are exclusively vested with the Panchayat at Appropriate Level (PAL)**

- Planning and Management of Minor Water Bodies

**Those Powers that are vested with the Gram Sabha or PAL**

- Consultation before land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects.

**Powers that are vested in the Gram Sabha and PAL**

- Enforcing-prohibition, regulation or restricting the sale or consumption of any intoxicants
- Ownership of Minor Forest Produce.
- Preventing alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of ST
- Control over institutions and functionaries land of ST
- Management of village market
- Control over Money Lending
- Control over local plans and resources for such plans including Tribal Sub-Plans

## **Dispute Resolution and Orissa PESA Act**

Conflicting resolution mechanism or ADR with due respect to the customary laws of the tribals, this has been given utmost importance in PESA specially endowed to Gram Sabha. Gram Sasan to safeguard & preserve customary modes of dispute resolution consistent with the relevant laws in force and in harmony with the basic tenets of the Constitution and human rights.

### **Development of PESA in Orissa – Unique Features**

- More inclusive definition of Village – “*Community*” or “*Communities*” to comprise a village;
- Gram Sabha’s competence to safeguard and preserve the traditions, customs, cultural identity of people, community resources and customary mode of dispute resolution, subject to the *relevant laws* in force, the basic tenets of the *constitution* and *human rights*;
- Gram Sabha vis-à-vis Gram Panchayat:
- Gram Sabha to consider & approve annual budget of the Gram Panchayat:
- To consider levy of all taxes, rents and fees:
- Call for information from the Gram Panchayat:
- Gram Panchayat to refer matters to Gram Sabha for its decision.

### **Mentioning the details of Village Development in Orissa PESA – Development Planning and the Gram Sabha**

- Under Orissa PESA every Gram Sabha shall have the power to approve the plans, programmes and projects for economic & social development
- Role restricted to granting approvals to ‘decided plans’.
- Implementation of such plans by the panchayat;
- Consequences of non-approval? Law silent ...



### **Customary Laws**

- Common terms or references to the law of indigenous societies include customary law, indigenous law, native law, and tribal or native law ways. All refer to the same concept.
- The indigenous approach requires problems to be handled in their entirety. Conflicts are not fragmented, nor is the process compartmentalized into pre-adjudication, pretrial, adjudication, and sentencing stages. These hinder the resolution process for victims and offenders and delay the restoration of relationships and communal harmony.
- The concept of law as a way of life makes law a living concept that one comes to know and understand through experience. Law, as life, is linked to the elaborate relationships in many tribal communities.
- Indigenous methods of conflict resolution include traditional dispute resolution, peace making, talking circles, family or community gatherings, and traditional mediation, describe only by the language of the tribal community. All these refer to the methods of resolving problems and to the methods of restorative and reparative justice.

### **Issue**

- Conflict between institutional and customary laws
- Lack of Education
- Lack of Influence on Factors Affecting the lives of the Indigenous People
- Non Implementation of Government Programmes – Service Sectors – Health Care/Sanitation/ Safe Drinking Water/Education/PDS
- Denial of Self Rule – PRI
- Threat and Degradation to livelihood resouresh

- Environmental Degradation Pollution.
- Less and Less Gainful Employment – Landless/  
Wages
- Food and Income Insecurity
- Non Availability of Credit
- Aggressive Market Mechanisms
- Lack of Long Term Response to Disasters
- Conflicts Over Control of Resources – CPR/  
Sanctuaries
- Displacement – Mining/Dams
- Alienation of Resources – Distress Sale/Acquisition  
– Land, Forest, Water
- Migration
- Increased Child Labour
- Property and Civil Disputes
- Family disputes
- Others disputes – wage, bonded labour, anti social  
elements
- Inter and intra village conflicts
- Increased Violence on Women
- Increased Human Rights Violation
- Social Conflict Between Communities (Adivasis/  
Dalits/Non Adivasis)
- Mal-nutrition and health hazards
- Increased Vulnerability to natural and manmade  
disasters
- Government schemes (top to down approach)
- Social customs and rituals, belief and traditional  
and social heritage.



## **TRIBALS MOVEMENTS FOR ESTABLISHING CUSTOMARY LAWS**

### **Historical Background**

- Kol Mutiny – 1831 (Singhabhum)
- Santal Rebellion – 1855
- Birsa Movement against the imposition of general law on tribals British strategy to control conciliatory measures by Ganjan and Visakhapatnam Act – 1839 to exclude tribal areas from Madras Presidency
- Regulation 13 of Bengal, Wikilson Rules for administration of civil justice in tribal areas.
- 1935 Act – Partially Excluded Area.
- Special status under the Constitution – January 26, 1950
- Directive principles of State Policy – Special responsibility of State for promotion of scheduled tribes in the State. (Article – 15, 16, 17 and 19)

### **Mechanism to Resolve Conflict**

- Community Meetings
- Community vs other Community meetings
- Gram Sabha Meeting
- Gram Sabha Versus other Meetings
- Nyaya Panchayats
- Community Panchayats
- Community traditional members meeting
- Village head man meetings
- PRI meetings
- Meeting with officials
- Memorandum
- Meeting with the both the parties to the problem

***Last but not least, the customary laws have no space in the present context. So efforts should be taken to integrate the accepted customary law with the institutional laws.***

# **LOCAL-GOVERNANCE IN SCHEDULED AREAS - A STUDY OF ANDHRA PRADESH**

**M. Arun Kumar<sup>1</sup>**

## **Introduction**

Decentralizing government from national Level to region, districts, municipalities, towns, rural areas, settlements, and communities enable people to participate more directly in governance process and can help empower people previously excluded from decision-making. In this way, a country can create sustainable and equitable opportunities for all its people. Closer contact between officials, local communities and organizations also encourages the exchange of information that can be used to format development programs that are tailored to local needs and priorities, and thus are more effective and sustainable. The successful Governance programs and projects greatly depend on the way they are designed and implemented.

The traditional tribal bodies- tribal councils/tribal Panchayats - are one of the oldest known institutions of local self-government. Today, these traditional institutions have become inactive or have lost their influence or have generally weakened in such areas and amongst such communities which have had continuous close interaction with other communities or where statutory Panchayats have been introduced.

Situation in tribal areas in respect of self-governing institutions was quite different from the general areas. The tribal people have a strong community organization. Therefore, the introduction of formal Panchayats created an anomalous situation. These formal institutions have been largely ignored

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day-to-day life. In those cases, where the new leadership of formal Panchayats tried to assert its authority, there was confrontation.

## I

### **Theoretical Framework**

Decentralization can be usefully understood as a political process whereby administrative authority, public resources and responsibilities are transferred from Central Government agencies to lower-levels of organs of Government or Non-Governmental bodies, such as community-based organizations (CBO), third party Non-Governmental Organizations (NGOs), or private sector actors (Crook and Manor, 1998)

Democratic decentralization is also predicated upon the notion that greater participation in local political affairs will improve the quality and reach of government services, particularly ones aimed at improving the lives of poor and politically marginal groups in society (Souza, 2000). For proponents of democratic decentralisation, a central challenge of improving the delivery of public services becomes one of 'crafting' institutions which can maximize participation in political life. (Ostrom, 1990).

Decentralization has emerged as a dominant trend in world politics. In 1998, the World Bank estimated that all but 12 of 75 developing and transitional countries with populations greater than 5 million had embarked on a process of political devolution (cited in Crook and Manor, 1998).

If the process of decentralization brings the people into the mainstream of politics and makes them partners in the decision making process, then the role of civil society in bringing about this transformation also becomes an interesting facet of the issue. Civil society is always thought of as being opposed to the State, though there are also some studies which argue that the civil society should co-opt with the State for bringing

about better participation of the people in public affairs and also in making them aware of the various possibilities for fulfillment of the broader agenda of the democratization process through good governance.

There are two dominant conceptions of civil society today. In the first, more popular view of civil society is defined in opposition to the State. It is identified with the voluntary associations and community bodies through which individuals govern them selves. The Non Government, non-party associations of civil society are here seen as forums of direct participation which can intervene to curtail the increasing power and authoritarianism of the State. In the second, sociologically more informed view of civil society is associated with the set of institutions that mediate between the individual and the State. Although mediating institutions exist in all societies, civil society is linked with institutions that are open and secular.

Wood (1990) points out the idea of 'civil society' and the conceptual opposition of 'State and civil society' has been associated with the development of capitalism. The modern conception of civil society, a conception that appeared systematically for the first time in the eighteen century -is clearly distinct from the earlier versions. Now civil society represents a distinct sphere of human relations and activity; distinguished from the State-it is neither public nor private, but perhaps both at once (Wood, 1990).

The concept of civil society in India draws its intellectual charge as a cultural critique of the Indian State. (Dipankar Gupta, 1997; 128). Gupta further states, " For Hegel, the civil society cannot be seen as some thing external to the State. For a civil society to function, it needs ethical sanction which cannot come from a collection of laws but from a developed modern State, where individual freedom is enshrined not as a virtue, or a morality (what ought to be), but in ethics where particulars are satisfied through the general" (1997).



Civil society is associated with democracy and democracy gives equal opportunity to all individuals irrespective of the distinctions. Assuming that civil society heralds the presence of an open and secular system, there is little reason to separate civil society from the State. (Mahajan, 1999; 188).

Participation of the people in the decision making process is facilitated through the institutions of the civil society. The building of networks and associations as the social capital also helps the people to be not just the passive recipients of the governing process, but active stakeholders in it. Therefore a broader understanding of the concept of participation in public affairs is necessary.

Around the world, there has been growing interest in ways to enhance public involvement in governance, and with it the quality and legitimacy of democratic decision making (Fung and Wright 2001; Gaventa 2002). The growing demands to be included with the creation of new political and policy spaces for citizen involvement in governance coincides in some contexts through changes in law and policies. Such participation complements conventional models of political participation with a new architecture of democratic practice. Whether in budgeting, policy dialogue, planning, project appraisal, poverty assessment, monitoring or evaluation, participatory alternatives to expert-driven process have gained ground (Holmes and Scones 2000; Cornwall and Gaventa 2001).

Participation is seen something distinct from the functioning of Panchayats. How should people participate? In what should people participate? Where should people participate? To phrase this in Dreze and Sen's (1995) terms, panchayats are also seen as perhaps one, not necessarily most important, instruments in the process of enabling people's participation. There are other instruments - voluntary agencies, Self Help Groups, watershed committees and the like which will also do. All are treated as of equal potential, with the choice

depending on what works where. These amendments have laid the ground for fundamental changes in how people can participate in expansion of social opportunity.

The present paper critically analyses the PESA Act and the Andhra Pradesh's Conformity Act. The paper is based on Field Survey of Grama sabha in Scheduled Areas. The paper is divided into 4 sections. The section one describes the Situation of tribals in Colonial Regime and tribes under the Post-independence period and formation of Scheduled Areas. The second section deals with the Bhuria Committee Report and positive and negative points of PESA Act. The third sections deals with the Andhra Pradesh Conformity Act. The final section deals with the Field study, which was conducted in Vishakhapatnam District on Working of Grama sabha and Grama Panchayat in Scheduled Areas. For this study two village Panchayats had been selected. One village Panchayat, where civil society organisations plays active role and other village Panchayat where Government plays active role.

## **II**

### **The Tribals life under the colonial regime**

It was the colonial Britishers who first made attempt to gather information about the isolated Tribes. The isolated tribals' nomenclature has changed from time to time. In the first Census Report of colonial India 1891, 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"<sup>2</sup>. 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.

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<sup>2</sup>R.C. Verma, (1995). Indian Tribe Through the Ages P.5-6



The tribals generally earn livelihood by hunting, cultivation of land as well as by collecting minor forest products such as mahua flowers, gum, wood, fruits, turmeric, 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 for personal consumption. Many still 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 there were not at all conducive to their well being and growth.

### **Tribes under Post - Independence period**

After Indian Independence the tribals acquired a new significance. They were subjugated through a number of conscious and elaborate influences. The Government of India has launched various projects for tribal welfare and various special provisions have been laid down in the Constitution and planned economic development has been inaugurated by the post independence Government. Under the Constitution of India special provisions have been made for the promotion and protection of social, economic, education and development of Scheduled Tribes. The main provisions relating to Scheduled Tribes are contained in the Articles 15(4), 16(4), 19(4), 19(5), 23, 29, 46, 164, 275(1), 330, 332, 334, 335, 338, 342, of Fifth and Sixth Schedules of the Constitution.<sup>3</sup>

The scheduled tribes traditionally occupy an area called Scheduled Area. The Scheduled Areas have been constituted with the following two objectives: (1) to assist the tribals in enjoying their existing rights without any hindrance by others; and (2) to protect and promote the interest of the Scheduled

<sup>3</sup>R.C. Verma, (1995). *Indian Tribes Through the Ages* P.109

Tribes in Scheduled Areas. Since independence, the President of India has issued two orders ie. The Scheduled Areas (Part-A States) Order, 1950; and The Scheduled Areas (Part-B states) Order, 1950 (as amended). These two orders of Scheduled Areas which are included in the Fifth Schedule of the Indian Constitution, declared certain tribal areas as Scheduled Areas in the respective States, Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Himachal Pradesh. The main features of the Fifth Schedule includes: (1) Special Legislative Powers of the Governor; (2) Governor's Report to the President; and (3) Tribal Advisory Council.

The Governor of a State has special powers of legislation with respect to the Scheduled Area. The powers are legislation by notification, and legislation by regulation. The Governor of a State is responsible for deciding whether an Act of Parliament or of the State legislature is suitable or not for the Scheduled Areas. The State Governor by public notification can direct that any act of Parliament or the State Legislature shall not apply to a Scheduled Area.<sup>4</sup> The Governor can issue the notification without any reference either to the Tribes Advisory Council or to the President of India. The Governor has been empowered to make regulations for peace and good governance of Scheduled Areas. These regulations may in particular prohibit or restrict the transfer of Scheduled Area land by or among members of the Scheduled Tribes. The regulations may regulate the allotment of Scheduled Area land to members of the scheduled Tribes. The regulations are also concerned with regulating the business of moneylenders by persons who lend money to members of the Scheduled Tribes in such Scheduled Areas. The regulation making power of the Governor is subject to some limitations as specified in the Fifth Schedule of the Constitution. The regulation should be made on the previous consultation of the Tribes Advisory Council. The regulation should be submitted to the President and shall not have effect until accepted by him.

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<sup>4</sup>R.C. Verma, (1995). *Indian Tribe Through the Ages* P.137-138



Fifth Schedule (para 3) of the Constitution provides that the Governor of each State having Scheduled Areas should annually or whenever required so by the President make a report (to the President) to keep the Union Government informed of the administration in Scheduled Areas. On the basis of this report the Union Government issues directives to the respective State Governments for better administration of the Scheduled Areas.<sup>5</sup> Clause 4 of the Fifth Schedule of the Constitution provided Tribes Advisory Council in each State having Scheduled Areas. If the President directs, this kind of Council may also be established in the States which do not have Scheduled Areas. The Council's duty is to offer advice on matters pertaining to the welfare and advancement of the Scheduled tribes in the states as referred to them by the Governor. It is intended to act as a channel of discussion about the nature and different stages in which the general laws and rules should be applied to the Scheduled Areas. It is enumerated in the Constitution that the Tribes Advisory Council should be involved effectively apart from legislative process in policymaking, planning and supervision of the development schemes, as well as in effective administration of the Scheduled Areas.

In terms of population of individual tribes there are extremely wide variations. A similar situation exists in the economic systems. There are food collectors, trappers, hunters and artisans, shifting cultivators, settled agriculturists and labourers of various kinds. The nature of social organization also varies considerably from simple nomadic and little known communities to larger, complex and permanently settled tribes.

### ***Scheduled Areas: Historical Perspectives***

The term Scheduled Areas has been defined in the Indian Constitution as "such areas as the President may, by order, declare them to be Scheduled Areas". The criteria followed for declaring an area as Scheduled Area are preponderance

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<sup>5</sup> Ibid. P.142

of tribal population, compactness and reasonable size of the area, under-developed nature of the area, and marked disparity in economic standard of the people. These criteria though not spelt out in the Constitution of India have become well established. They embody, broadly, the principles followed in declaring 'Excluded' and 'Partially Excluded Areas' under the Government of India Act, 1935, and spelt out in the Report of the Scheduled Areas and Scheduled Tribes Commission, 1961.

The important provisions in the Fifth Schedule relate to (1) submission of annual reports by the Governor to the President on the administration of Scheduled Areas and (2) Constitution of Tribes Advisory Councils.

The tribal communities are traditionally well versed in the regulation, control and conduct of their domestic, religious, socio-economic, political and judicial affairs through the combined wisdom of their leaders and village councils. The Constitution 73<sup>rd</sup> Amendment Act, 1992, incorporates many path-breaking provisions for effective local self-government practices, but this is not applicable to the Scheduled Areas because of their unique characteristics and special needs as also recognizing the special features of the scheduled areas and the tribal people. Subsequently, on the basis of expert advise as contained in the Bhuria Committee Report, 1995, an Amendment Act was enacted in December 1996 enabling extension of the seventy-third Amendment Act, 1992, in a modified form to the Scheduled Areas.

It would thus be seen that even before the provisions relating to Panchayats in part IX of the Constitution were extended to Scheduled Areas in 1996 in a modified form, many Constitutional provisions were available to many States to protect and promote the interests of the Scheduled Tribes in the Scheduled Areas. It is a different issue as to how far these have been used, where and how effectively they were used.



### **III**

#### **Bhuria Committee Report**

A Committee of Select Members of Parliament and Experts (Chairman: Shri.Dilip Singh Bhuria) examined this question in detail.

Article 243 (M) of the Constitution provided that in order to make the provisions of 73 Constitutional Amendment applicable to Schedule and Tribal Areas, with such modifications as deemed fit, the Parliament could make a law, to that effect. As a first step towards enacting such a law the Government of India appointed a Committee of Members of Parliament belonging to schedule tribe communities and experts under the Chairmanship of Dilip Singh Bhuria, M.P from Madhya Pradesh. The committee consisted of 22 members of whom 15 were Members of Parliament (including the Chairman) and others included were experts and serving Officers in the Government of India. The committee, known as Bhuria Committee submitted its report in January 1995; It inter-alia dealt with the issues of participatory Democracy, Effectiveness of Customary Laws, Community Control over Resources and Appropriate Administrative Frame Work for the Schedule Areas. The committee felt that while sharing the new Panchayati Raj structure in tribal areas, it is desirable to blend the traditional with the modern by treating the traditional institutions as the foundation on which the modern super structure should be built and taking cognizance of their indigenous institutions and ethos while considering democratic decentralization in tribal areas.

The following are some of the major recommendations of the Bhuria committee.

The committee recommended an alternative system but built on the foundations of traditional institutions. It also recommended a harmonious blending of various Constitutional provisions particularly, those of the Sixth Schedule and the

Directive Principles. Accordingly, the extension law has been enacted extending the provision of the Part IX of the Constitution concerning Panchayats to the Schedule Areas.

The committee also recommended a three-tier structure, which resembled the provisions of Part IX of the Constitution. Recommendations regarding the Powers were quite elaborative and recommended that the powers to be given to Panchayats in Schedule Area should aim at combating and preventing the exploitation of Tribals and building of political, economic and social strength of the tribal Communities. These Panchayati Raj Institutions should also be vested with adequate powers to deal with the emerging problems among tribal people, like growing Indebtedness, land alienation, deforestation, ecological degradation, displacement, excise policy, water resources etc. Further, these powers should emanate from the Constitution and not left to the discretion of the States. The recommendations of the Committee with regard to powers and functions of Grama Sabha, Gram Panchayats, Intermediate Panchayats and the Autonomous District Councils were comprehensively spelt out. The Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 were primarily based on the recommendations of Bhuria Committee Report.

The question about the structure of self-governing institutions in the tribal areas, therefore, came up for specific consideration at the time of making the new provisions for Panchayats and Nagarpalikas in the Constitution. It was agreed that the general law in this regard will not be suitable for the Scheduled Areas in the view of the strong local tradition still having its way amongst the tribal people. The scheduled areas therefore were kept outside the purview of both these parts. It was decided that these provisions may be extended to the Scheduled Areas with such exceptions and modifications as may be considered suitable by the Parliament.



### **Panchayat as Self-Governing Institution: Case of PESA Act**

The extension Act has provided that the State may endow Panchayats with the powers and authority as may be necessary to enable them to function as institutions of self-government. Surprisingly none of the State legislatures has made any specific provisions for making the Panchayats as making the Institutions of Self Government by providing adequate safe guards so that the Panchayats at higher level do not assume powers and authority of the Panchayats of the lower level and the Gram Sabha.

Gram Sabha as defined in Article 243(b) is a formal institution. It is not being constituted for every village. The village, in its turn, is not envisaged as a natural social unit but is a formal entity. It is to be notified by the Governor under sub-clause (9). The village so notified may, or may not be coterminous with a collectivity of people living in a habitation or a group of inhibitions as community. The administration, in defining such entities, generally goes by the population norms, with no concern for the social reality. The result is that a number of habitations may be brought together mechanically just for the limited purposes as may be specified in the law, and no others. Such a conglomeration tends to be a crowd with no trace of community sense. The simple formulation of Section 4 (d), that is, "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 can be said to comprise the Magna Carta of Gram Samaj, the village community, the real building bloc of the nation which has been totally forgotten and mischievously used by the ruling elite in our country. According to this Act, Grama Sabha has to be set up.

### **Positive Aspects of the PESA Act**

1. The 73rd Constitutional Amendment Act does not have a provision for the constitution of the Gram Sabha, but determination of the powers and

functions are left out to the State Legislatures (Article 243 A). But in the Extension Act, the Gram Sabha has been made the soul of the democratically decentralized administrative structure, the paradigm of tribal identity, their traditional Customs and Practices, and Community Assets, and in Resolution of local disputes.

2. According to this Act, participation will be more meaningful and effective if the community, beneficiary organization in particular, are institutionally statutorily involved in managing their own affairs and decision making processes. It is an important stabilizing element for the future of local Government and peoples growing stake in the community development.
3. This provision is likely to restrict the misuse of power by the political leadership or bureaucracy in the implementation/management of developmental programmes. It would also bring in a measure of transparency and accountability in the system and will lead to closer monitoring by the people.
4. The Extended Act has taken care of the serious problems such as Growing Indebtedness, Land Alienation; Forest related problems, Problems of Displacement, Alcohol and other Natural Resources. Further, it has been mandated that either the Gram Sabha or the Panchayats at the appropriate level have to be consulted before the Acquisition of Land in these areas. So that people will get chance to take decisions for their own problems.
5. The Act stipulates that at least half of the seats should be reserved for the Tribals in all tiers PRIs because the population of the Scheduled Areas is predominantly tribal. So Tribal can participate more and they will govern themselves.



6. If some Scheduled Tribes failed to secure membership at the Intermediate or District level Panchayats, the State Governments can nominate such Tribes to these bodies.
7. All the Chairpersons of the Panchayats at all levels will be tribals. This provision is likely to help the tribals to govern the bodies and maintain the tribal character of the Schedule Areas.

### **Negative Aspects of the PESA**

1. The Act is applicable to the V Scheduled Areas only. It does not cover the VI Scheduled Areas. Moreover, there are some Tribal areas in the country, which are covered neither under the V nor under the VI Schedule.
2. The VI Schedule Area, which is out of the preview of the Act, has the structure of Autonomous District Area, which is not necessarily co terminus with the administrative District boundaries. They do not have any statutory body below it that is at the intermediate level (block level) or at the village level.
3. Under the Provisions of the V Schedule, A Tribes Advisory Council (TAC) is to be constituted to advice on such matters pertaining to the welfare on advancement of the Scheduled Tribes in the State. The question here is whether the TAC will become an obstacle in the growth of the Panchayat Raj Structure at Local level because the functional domain of Panchayats will be curtailed and they may perceive TAC as a rival center. Further what will be the linkage between the TAC and Panchayats?

4. While modifying the State Panchayat Acts, it should be in consonance with the customary law, social and religious practices etc. these aspects have many variations among various Tribes within each State. However it may not be possible to have different Legislations for each of the Tribes with in the District or State. Also, the customary laws are not properly codified and documented.
5. The term "community" is not clearly defined in the Act and therefore it would be difficult to delimit a Village as it may lead to various complications and confusions.
6. The term "Village" is also not clear. There is confusion that whether it is Revenue village or Normal Village. Revenue village is different from other normal village.
7. The Chairpersons at all levels Panchayats shall be reserved for the Scheduled Tribes. In other words, the office of the Chairperson of Panchayats at the three tiers will be permanently reserved for STs, which may go against the judicial verdict.
8. In the extension Act, functions, powers and responsibilities have been assigned to "Gram Sabha and Panchayats" or either of them. Thus, one can conclude that a particular function given in the Extension Act has to be first approved by the Gram Sabha and then executed and /or implemented by the Panchayats. In some states, words like "every Panchayats" have been used, which created confusion because it does not specify which tier would perform which function.
9. If Grama Sabha keep on conducting every village of the Panchayat, people will not know each one's interest.



### **Andhra Pradesh Conformity Act**

Andhra Pradesh is one of the 8th States where the Schedule Areas were covered under the 5th scheduled of the Constitution in the year 1972. Although 73rd Constitutional Amendment Act, 1993 insisted upon a uniform structure of PR system throughout the country, section 243-M of the Act restricted the application of the provision in the act automatically to the scheduled Areas, which are generally known as Tribal Areas. It is also referred to in Art 243-M (4).

In 1996, the extension of Panchayats to scheduled Areas Act was enacted which instructed the states to follow up the action by bringing further amendment in their respective State Legislations within a year. The Government of Andhra Pradesh appointed a sub- committee to examine various aspects of the Central Act. The convener of the cabinet sub- committee was the Minister for Panchayat Raj and Rural development. Based on the recommendations made by the committee the State legislative passed amendment to this /act, 1994 as Act No 7 of 1998 on January 16, 1998. Thus, the Panchayats in the Scheduled Areas are brought in Conformity with Central Act, 1996.

Under the Andhra Pradesh (Second Amendment) Act 1997, Grama Sabha are vested with safeguards to preserve traditions, customs, their cultural identity etc. The Gram Sabha is empowered to approve plans, programmes and projects for social and economic development and also can select beneficiaries under the poverty alleviation programmes and other schemes. The Sabhas can issue certificate of utilization of funds for the Panchayats. The Mandal Parishads in Scheduled Areas shall be consulted before making the acquisition of land in Scheduled Areas for development projects and before rehabilitating persons evicted by such projects. Further planning and management of minor minerals, water bodies in Scheduled Areas shall be entrusted to Gram Panchayats, Mandal Parishads or the Zilla Parishads as the case may be. The Panchayats shall be consulted before issue of license for mining,

lease for minor minerals in the Scheduled Areas. The Gram Panchayats also exercise powers for enforcement of prohibition of regulation or restriction of sale and consumption of any intoxicant, ownership of minor forest produce, prevention of alienation of land in Scheduled Areas and its restoration, management of village markets, exercise control over money lending etc.

### **Comparative Analysis of Extension Act and State Conformity Act**

	<b>Central Act</b>	<b>State Act</b>
1	Even Gram Sabha shall be competent to safe guard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution	Grama sabha is made complement subject to the conditions "without detriment to any law for the time being in force",
2	Every Gram Sabha shall approve the plan programmes and projects before those are taken up for implementation by the panchayats to identify : beneficiaries under the poverty alleviation and other programmes and issues certificate of utilization of funds by the panchayats for these programmes	Provisions made
3	Prior consultation to Grama Sabha or the panchayat before making the acquisition or land for development of projects and before re-setting or rehilitation persons affected by such projects in the Scheduled Areas.	With Mandal Panchayats and not with Gram Sabha



4	Planning and management minor water bodies by Panchayats at appropriate level may be.	Gram Panchayat, Mandal Panchayat, or Ziila Panchayat as the case
5	<p>Prior Recommendation of the Gram Sabha or the Panchayats at the appropriate level, made mandatory for,</p> <p>a. Granting of Prospecting license or mining minerals lease for minor minerals in the Scheduled Areas.</p> <p>b. Grant of Concession for the Exploitation of minor minerals by auction</p>	Gram Panchayat
6	<p>The Panchayats at the appropriate level and the Gram Sabha are endowed Specifically with powers:</p> <p>a. Enforce prohibition or to regulate or to restrict the sale and consumption of any intoxicant.</p> <p>b. Ownership of minor forest produce</p> <p>c. Prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a ST</p> <p>d. Manage village markets</p> <p>e. Money-lending to the ST</p> <p>f. Exercise control over institutions and functionaries in all social sectors.</p> <p>g. Control over local plans and resources for such plans including Tribal Sub-plans</p>	Gram Sabha or the Gram Panchayat as the case may be. Except Control over local plans and resources - for this the powers have give to Mandal Pari shad

7	State legislation shall make necessary provisions to enable them to function as institutions of self-government and shall caution safeguards to ensure that Panchayats at higher level do not assume the power and authority of any Panchayats at the lowest level of the Gram Sabha.	No safeguards are provided in the Act
8	The State Legislation shall endeavor to follow the pattern of the Sixth Scheduled of the Constitution while designing the administrative arrangements in the Panchayats at District level in Scheduled Areas.	No provisions are made.

### **Working of PESA**

A cursory reading of the Central Act shows that PESA is grounded in the principle of participatory democracy at the basic unit of governance that means the Gram Sabha. Empowerment of the Gram Sabha is the core principle of PESA and this sanction of Gram Sabha stands on entirely a different footing from empowerment of a Gram Panchayat, though the two terms Gram Sabha and Gram Panchayats are being used interchangeably. Most of the State legislations, reading the two terms as synonymous, have empowered the Panchayat, which, for all practical purposes, actually disempowers the Gram Sabha. Hence any adoption of the PESA by the States must be aware of this ambiguity and discern the two institutions in the right sense.

At the ground level real devolution of power is evident in the Panchayat control at every tier, over schemes devolved by the State, Center or extremely aided agencies. In most State laws Gram Sabha control is only over schemes and programmes sanctioned from above rather than intrinsic and systematic



changes from below to achieve real empowerment. In such a scenario the role of Gram Sabha had been put on a backbench. A general grievance among all the States is that there was no consultation what so ever at the local level prior to amendment/enactment of the State PESA. Various State Departments, particularly the Forest Department expressed similar reservations about the consultation aspect. It is strongly felt that the State Legislation on PESA should be small and single legal document that emerges after a comprehensive examination of the other relevant State Laws and their inconsistencies.

The critical component of the PESA is the Gram Sabha or the village Assembly. The Gram Sabha became an integral part of the Constitution in the post 73 Amendment period that incorporated the Village. PESA made a significant departure from all previous precedents of the colonial dispensation where a village was created by the administration. PESA integrates the first principle of self-determination of the village by the community itself as Participatory Democracy. The second critical component of PESA can be practiced only in a Self Governing village, like the two sides of a coin.

The current status of the various State PESA laws leaves much to be desired. The State Laws are at loggerheads with the Constitution and of a section (5) of PESA. It is rather strange that the Central Government and its concerned Ministry have turned a Nelsons eye to this fact. The implementation aspect is equally bleak as none of the States have evinced a keen interest in enforcing the required provisions of the PESA. A faithful implementation of the PESA will go a long way in the realization of genuine tribal community. But as things stand, it is suffice to say that competent authorities take cognizance of the facts. The issue of the inconsistency of the PR laws with PESA, coupled with lack of implementation in the absence of rules, procedures and guidelines are the primary contradictions that require attention.

### **PESA and Common Property Resources (CPR)**

Today CPR's, particularly the village commons are the Focus of conflict between the people and Government, a conflict which arises on the issue of legal ownership and access to CPR's. In traditional Tribal community's property was common and private owner-ship was unfamiliar. Common property was regulated by customary or unwritten law, which was not recognized by the British who believed firmly in written laws in private property. No efforts have been made in independent India to reverse the legislations made during the colonial rule. Infact the principle of eminent dominion has been further strengthened in legislations pertaining to CPR's. Though access to CPR's is denied in many cases (Forest is good example), people still continue to use them as their daily livelihood and depend on them. This has often led to conflict on a regular basis and continual hardship for the people. An unfortunate result of the conflict of ownership is the progressive degradation of CPR's.

The provisions of National Water Policy and State Water Policies are at variance with PESA when it comes to the management of CPR's, particularly the minor water bodies. The PESA is focused with regard to community's traditional and customary rights over CPR's and seeks empowerment of the Gram Sabha to manage these, leaving water policies to the Panchayats. To this extent the National Water Policies also entrusts Panchayats with planning and management of minor water bodies. Since the term minor water bodies remains vaguely undefined in the large body of laws governing water and water bodies, it created a scope for confusion at the local level. Further the National Water Policy up-holds private sector participation and under the guise of planning, development and management of water resource projects, the policy encourages private sector ownership at the cost of community ownership of water resource.



An over view of these laws shows that in most states only planning and management of such minor water bodies are being entrusted to Panchayats where as the question of ownership is left unaddressed. The different enactments in Andhra Pradesh indicate a clumsy legal framework for CPR's and water bodies. The crucial question of ownership and control of Panchayats is a grey area despite some progressive provisions under the A.P Panchayat Raj Act of 1994. The adoption of PESA in the State also leaves much to be desired. Unless the State Government comes up with the relevant rules, PESA provisions under minor water bodies cannot be implemented.

Although PESA ensures the Gram Sabha approval of Plans, Programmes and Projects for social and economic development, the Gram Panchayat has no role to play in the plan formulation aspects of development process. Its role is restricted only to approval of pre-conceived plans. There is no future course of action if the Gram Sabha happens to reject a plan. The Gram Sabha veto does not nullify any socio economic plan or project. State laws on PESA must detail the role of Gram Sabha in formulation of plans that affect them. There should be procedures and guidelines to meet different exigencies.

### **Acquisition of Land in Scheduled Area for Mining and Development**

Land and land based resources are technically community resources. However PESA provides special provisions for land acquisition. A delegate review of land acquisition laws including the definition of 'public purpose' and clear guidelines for the same making the definition more exhaustive, instead of being arbitrary. This is definitely an area of conflict (the provisions on public purposes v/s the provisions of PESA).

### **Ownership of Minor Forest Produce (MFP)**

Section 4 (M) of PESA authorizes the Gram Sabha to act in all areas where the tribals face threat to survival and welfare as result of exploitation. The PESA creates legal space for

direct community action. Hence PESA directly confers ownership on MFP to the Gram Sabha as it a major source of survival. But the studies show that this right is more in breach than in observance. While states have amended P.R Acts endowing the Gram Sabha/ Gram Panchayat with ownership of MFP, these have not been functional. As the commercial value of MFP items appreciated, States nationalize or commercialise them for optimizing State's revenues. Hence though ownership of MFP is vested with the Gram Sabha, the State Governments have taken care to ensure that the right granted by PESA is effectively scuttled.

Effective implementation requires MFP to be properly and legally defined, with out any ambiguous terms such as harvestable in a sustainable or non-restrictive manner. Ownership rights over MFP should remain with Gram Sabha and all forest produce including Tendu leaves should be declared as MFP. Ownership, control and management of MFP is closely linked with the issue of forest management and requires amendment of existing Forest Acts / rules, P.R Acts / Rules to bring them in to conformity with the PESA. Secondly the states would have to accelerate steps for efective transfer of MFP ownership to the Gram Sabha, elimination of middle men and promotion of cooperative endeavors for value addition. The implementation of PESA in letter and spirit calls for forestry activities to reflect the economic priorities of tribals, partnership building with the forest administration, encouraging traditional skills- enhancement and supporting capacity building as an essential part of forest management.

### **Field Study- Visakhapatnam District**

The present section deals with the case studies on working nature of Grama Sabha, functioning of Gram Panchayat, and the implementation of PESA Act. For this I had selected two village panchayats in the Visakhapatnam district of Andhra Pradesh. The intention behind the selection of the



- two village Panchayat is to see whether the civil society organization can mobilize the people in terms of participation regarding the Grama Sabha, Awareness towards the Grama Sabha / Grama Panchayat, and implementation of the PESA act.

### **Village Background**

Teegalavalasa Gram Panchayat situated in Hukumpet Mandal is 20 km from the Hukumpet and 30 Km from the Paderu, where the ITDA office is located. The population of the village panchayat is 3522 out of which the male population is 1545, and female population is 1955. The village panchayat has 22 hamlets. Different tribes like kodu, Konda Dora, Bagita live in this Gram Panchayat. The sarpanch of the village is from Bagita tribe. The village secretary stays in Paderu. The Grama Sabha has been called for two times in the year 2003. A Non-Governmental Organisation 'Adivasi Ikya Vedika' has been working in this Grama Panchayat. This civil society organization is formed by the tribes of the particular Grama panchayat. The organization has started with 5 members in 1997, now almost all villagers are members of this Organization. The organization is funded by Sustainable Tribal Empowerment Programme (STEP) of Care, India. It has been working for the tribals to participate in the Grama Sabha / Gram Panchayat activities.

Peddalabbudu Gram Panchayat situated in Anata giri Mandal near Araku valley of Vishkapatnam district and it is constituted of 20 hamlets spread over an area of nearly 10 Kms. The population of the village panchayat is 6500. Different ethnic groups like Kotia, Valmiki, KondaDora, Bagata, etc. live in this Gram Panchayat. The Grama Sabha has been called for two times in the year 2003. Non-Tribes are also residing in this Gram Panchayat most of whom are traders & money-lenders. They occupy more land in scheduled areas, even though Scheduled Area Acts strictly prohibits them. There are some civil society organizations working in this area, but out side the purview of governance issues.

**Nature of Village**

1.	Name of the Gram sabha	Teegalavalasa	Peddalabbudu
2.	Name of the Gram Panchayat	Teegalavalasa	Peddalabbudu
3.	Distance to the main village	0	0
4.	Total population	582	6500
5.	Types of tribals living	Kodu, Konda reddy. Bagatha.	Kotia, Kondadora, Bagata.
6.	Whether Elections held under PR Act	Yes	Yes
7.	Types of GS organized	VTDA	VTDA
8.	Venue of GS	Under the Tree	School Building
9.	Time of Conducting GS	Evening time	Morning time
10.	Officials attending the GS	E.O	Village secretary
11.	Who is presiding Grama sabha	Sarpanch	Sarpanch, Member.
12.	No of times meeting held in a year	Two	Two
13.	Issues raised by the people in GS	Relating water pipelines, Electricity	None
14.	Quorum	No	No
15.	Percentage of women participation	50%	Very less
16.	Involvement of NGO, if any	Adivasi Ikya Vedika, Local NGO.	No



17	Whether awareness created	Yes	No
18	Current activities of GS	Construction of Public toilets	Repairing Street lights
19	Any clash of interest	Between NGOs and Officials	No
20	Any other issues	-	-

### **Tribe's Perception of PESA Act**

When we asked people regarding the PESA Act, we found that many people are unaware of what PESA Act is? We had given a questionnaire to the tribals regarding the Act.. The tribals of Teegalavalasa Panchayat have better understanding about PESA than the tribals of Peddalabbudu Panchayat.

The officials are aware that there is separate Act for the Fifth Schedule. They were also aware that more powers are given to the Gram Sabha on control and preservation of land, water and forest but they were not aware how it would be implemented. The Government has the responsibility to create awareness among the tribals to participate more in the local governing bodies, and then only this Act can be successful.

There are some NGOs who have been working on issues affecting tribals' life in addition to Panchayat Raj. Here is the example of the local NGO run by the Tribals Adivasi Ikya Vedika concentrating on this issue particularly in Teegalavalasa of Paderu Area, which is creating awareness among their people regarding their own rights. This NGO had a tremendous impact on villagers. We could see lot of things, happening in favor of the tribals in this village. The decisions regarding the disputes are taken in this village, people of this village are not allowing the money-lenders to their villages, people are interested towards the Government policies and even the school teachers are regular to the schools and even to Grama Sabha meetings.

In other Village it's to note that people are not interested to participate in the Grama Sabha meetings. When we asked the question about to the villagers, most of them had given the same answer, i.e what will I get? The problem lies here. People are interested to participate in the parallel committee like JFM, watershed, etc than the Grama sabha, even though the Grama sabha is a Constitutional body. People only got to know regarding the PESA through the active involvement of the civil society organizations.

### **Awareness Levels about Gram Sabha and Panchayats**

To assess the level of awareness about Gram Sabha amongst the community, the issues considered are the level of awareness about Gram Sabha and the Panchayat, functioning of Gram Sabha and Panchayats, role of Gram Sabha and Panchayats and the role of various committees of Gram Sabha and Panchayat etc, were studied.

Perceptions in the village community on the functioning of institutions of governance provides important insights on many of the issues like, the status of Panchayats and Grama Sabha; main causes of poor performance of these institutions, have been discussed below.

**Table-1: Awareness about Grama Sabha**

Levels of Awareness	Awareness of Gram Sabha		Awareness of GS Functions	
	Teegalavalasa	Peddalabbudu	Teegalavalasa	Peddalabbudu
Not Aware	15%	52%	36.5%	65%
Somewhat Aware	48%	30%	35%	15%
Fully Aware	37%	18%	28.5%	20%

Majority of the people have heard about the Gram Sabha in these two villages. But the awareness is more in the Teegalavalasa Gram Panchayat than the Peddalabbudu Gram Panchayat. When we asked the people in some of the hamlets in Peddalabbudu Gram Panchayats, people said that they never heard about the Gram sabha.



**Table-2: Awareness about Gram Sabha being a Constitutional Body (%of Households)**

Awareness of	GS as Constitutional body		Panchayats	
	Teegalavalasa	Peddalabbudu	Teegalavalasa	Peddalabbudu
Levels of Awareness				
Not Aware	38%	70%	13.8%	34.5%
Somewhat Aware	40%	19%	60.2%	43.8%
Fully Aware	32%	11%	26%	122%

Most of the people do not know that Grama Sabha is a Constitutional body. In Peddalabbudu village panchayat only 11% of the people are aware that Gram Sabha is a Constitutional body when compared to Teegalavalasa village panchayat where 32% of population are aware about Grama sabha. Table-3: Awareness of Gram Sabha Functions (%of Household) the general levels of awareness of village level institutions are unacceptably low. It is also true that landownership, education and household income are positively correlated to levels of awareness.

Majority of the respondents are somewhat aware about the panchayat in both the villages. The awareness level is higher in Teegalavalasa village panchayat than the Peddalabbudu village panchayat. The awareness level towards Gramsabha is also high in the Teegalavalasa panchayat. The success for panchayat raj is very much dependent on the awareness and participation of the people in the Gram Sabha / Grama Panchayat.

**Table-3: Awareness about Panchayats being a Constitutional Body (%of Households)**

Awareness of	GS as Constitutional body		Powers of Panchayats	
	Teegalavalasa	Peddalabbudu	Teegalavalasa	Peddalabbudu
Levels of Awareness				
Not Aware	33.5%	45%	23%	50%
Somewhat Aware	42.2%	40%	51%	35.2%
Fully Aware	24.3%	15%	26%	14.8%

The both village Panchayats are not much aware that the Village Panchayat is a Constitutional body. Both villages have the same opinion (somewhat aware) regarding the Panchayats.

Majority of the People of Peddalabbudu village Panchayat, do not know what are the powers of Gram Panchayat. In this village people are very much dependent on the local village secretary. The village secretary belongs to upper caste, even though, the State Governments have been telling the people that all village Secretary posts in Scheduled Areas will be given to belong Scheduled Tribes. It is duty of the village Secretary to educate the tribals regarding their rights.

**Table-7: Levels of Awareness about Powers of Grama Sabha (% of Households)**

Powers	Teegalavalasa			Peddalabbudu		
	NA	SA	FA	NA	SA	FA
Ownership of Minor Forest Produce (MFP)	25%	42%	33%	42%	30%	18%



To Prevent alienation of Land	22%	50%	27%	38%	38%	24%
To manage village markets	46%	30%	24%	55%	33%	12%
To exercise control over Money lending	55%	30%	15%	65%	20%	15%
To control over local plans	53%	28%	19%	67%	19%	14%
Management of minor water bodies	35%	40%	25%	50.5	23.8%	25.7
Powers relating to Sale and consumption of intoxicant.	50%	30.5%	19.5%	70%	20%	10%
Grant, License of mining, & Minor minerals.	45%	35%	20%	34%	48%	18%

The above table shows the levels of awareness of powers relating to Grama Sabha in Scheduled Areas. The villagers in both the villages are much aware of the Minor Forest Produce, because most of the tribals are dependent on the Minor Forest Produce and because it is also related to the Joint Forest Management. Most of the tribes are having problem with the GCC. They have to sell their MFP products to GCC. At times GCC is not taking some of the MFP products. Moreover GCC has more powers on the MFP products in the Scheduled Areas in Andhra Pradesh.

As regard to land alienation, 48 % of the land is legally and illegally under the hands of the non-tribes in the Scheduled Areas in Andhra Pradesh. People in both villages have better understanding towards the land alienation problem. But interestingly most of the villagers do not know that the Gram sabha has the power to protect the land in Scheduled Areas. In overall perspective people are not aware of the powers of the Gram Sabha.

**Table-8: Constraints Faced by Conducting Grama Sabha**

Constraint	Teegalavalasa	Peddalabbudu
Not aware of Responsibilities	30%	51%
Not aware of functions	22%	28%
Little room for decisions	1_8%	25%
Time constraints	15%	26%
Not given enough meeting notification	12%	36%
Do not Receive funds on tome	28%	42%
No Monitoring	27%	36%
Members lost interest	18%	29%
Have only vested interests	33%	47%
Cannot identify needs	10%	21%
Venue problem	21%	30%
No prior notice	15%	35%
Clash of interests	23%	15%

Tribals are facing so many problems to participate in the Gram Sabha. Some of the problems are like venue, people being informed the Gram Sabha at the last minute, most of the Gram Sabha meetings are being conducted in hard timings i.e. working hours.

**Table-9: Awareness of project -based committees**

Schemes	Percentage of Respondents			
	Teegalavalasa		Peddalabbudu	
	Yes	No	Yes	No
JFMVCFM committees	66%	34%	62%	38%



Forest protection committee	52%	48%	41.5% 58.5%
Watershed SHG	58.2% 63%	41.8% 37%	53.8% 46.2% 35% 1 65%

Tribals feel that they are not directly benefited in Gram Sabha Meetings and started participating in the institutional bodies, which are parallel to the Panchayat Raj institution. Some times these Committees are by-passing the Panchayat Raj bodies. The above table shows that people in Teegalavalasa are interested to participate in the JFM, watershed committees. Similarly the villagers of Peddalabbudu also participate more in committees. Moreover, these two villagers did not give any response to the nature of benefit occurring from the members of committees. Only small percent of the people who are members in particular committee believe that they have control over decision-making process of the committee. This shows that there is limited participation of the members in the matters of the committees. More than 80% of the members feel that they have no control over the decision-making in the committee. It was also understood that the decisions taken are not implemented properly. It was noted that generally the more powerful people in the village alter these decisions. Frequently, project officials tend to manipulate the decisions.

\* This paper is mostly based on the Report "Documentation of Efforts made by the State Governments and NGOs for Creating Awareness about the PESA in Scheduled V Areas of Orissa, Jharkhand and Andhra Pradesh", Institute for Socio-Economic Development, Bhubaneswar-30. The Report was submitted to the National Institute of Rural Development, Hyderabad. The author of this paper was one of the authors of the said Report, viz. Balaji Pandey, Damodar Jena and Jagabandhu Das.

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# As per the Part-IX of the Constitution, a state legislation on panchayats shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.

**Table-10: Membership of Committees**

Types of committees	Teegalavalasa		Peddalabbudu	
	Yes	No	Yes	No
JFM/CFM committees	45%	65%	37%	63%
FPC	33%	77%	28%	72%
Watershed	32%	78%	30%	70%
SHG	49%	51%	38%	62%

### Conclusion

Despite the fact that many laws have been passed for the upliftment of the people living in the Scheduled Areas, there has been an inefficient functioning of these laws. The most important feature of the 1996 Panchayat Act is to make the people in Scheduled Areas to govern themselves. It is quite impossible for this law to be successfully implemented with out the participation of the people. So the People's Participation gains much importance in the above context.

The purpose of the extension act has not been completely understood, either by the political leadership or by the bureaucracy. People at large are not aware about the latest system of tribal self- rule except in those areas where NGOs are working with the people, and where tribal people are also working in these NGO's as social activists.

Systematic panning should be done in order to implement the new provisions of Panchayat Raj Act. These provisions have to be described in simple Telugu or regional tribes dialects with Telugu scripts with illustrations and widely circulated to all villages in Scheduled Areas. The relevant protective Regulations like Andhra Pradesh Areas Land Transfers Regulations, Money lenders Debt Relief



Regulations, Mining laws, Various schemes of development activities like 1TDA, DRDA, Forest Department concession and privileges extended to Scheduled Tribes in utilization of forest wealth etc., have to be translated into Telugu/regional tribal dialects and made available to Panchayats/Gram Sabhas. Special training campus have to be organized to enlighten the tribal communities about various provisions of new Panchayat Raj Act and strategies of implementation for their own protection and development in all the Grama Panchayats. Regular orientation training camps have to be organized by Tribal Research Institutes for all the concerned Officials. The representatives of the Gram Sabha should be educated and should not be illiterate. They must be well-versed with all rules and regulations.

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## **DECENTRALISED GOVERNANCE IN MADHYA PRADESH:** Experiences of the Gram Sabha in Scheduled Areas

**Yatindra Singh**

*The Madhya Pradesh Panchayat Raj Adhiniyam, 1997 was enacted by the State Assembly, delineating the powers and functions of Panchayat Raj Institutions in Scheduled Areas. Four years on, this article looks at the effectiveness of the new system, and attempts to shed light on the working of the Gram Sabha in Scheduled Areas.*

The enactment of the 73rd Constitutional Amendment Act and the subsequent statewise Panchayat Raj acts in India have brought to the fore the significance of grass roots democratic processes. This change in the Indian political system is the result of a growing conviction that big government cannot achieve growth and development without people's direct participation and initiative. This experience has brought with it the lesson that the success of the new panchayat raj system largely depends on the congruence of the perception and commitment of the people, their leaders and officials, about the role to be played by them in the new system. Contextually and theoretically too, the new panchayat raj system has been created as a model of self-governance. The objectives of decentralisation are to execute and implement schemes and programmes to meet local needs, to mobilise people, to channelise their energies towards socio-economic reconstruction and to



involve them in all activities of the communities through the new institutions. Its objectives also include reducing the work of the higher levels of Government and making the people responsible to decide their destiny, as per the new dispensation envisaged under the 73rd Constitutional Amendment Act, 1992.

Gram Sabha is the basic institution of decentralised governance. It is the first modern political institution that seeks to place direct political power in the hands of the people, without the mediation of elected representatives. Gram Sabha, or people's forum, has always been an integral part of the concept of a Gram Panchayat. Rajni Kothari visualises Gram Sabhas as 'watchdogs' coming between 'the politician-bureaucratic nexus'. "The only way of making this nexus responsible and accountable is to provide larger citizen involvement in new variants of old institutions like the Gram Sabha which can combine older forms of informal consensus-making mechanisms with the more formal, institutionalised and legal forms decreed by legislation. With the new awakening in the rural areas, these bodies have the potential of overseeing the working of elected bodies and over time, with growing confidence that they cannot be browbeaten by dominant individuals or castes, become a force to reckon with" [Kothari 1998]. The legislative empowerment of the Gram Sabha in India is a political development of the utmost importance, because it marks the clearest break from the most dominant political orthodoxy of the 20th century [Mander 1999]. This recent faith in the Gram Sabha is based on the belief that the objective conditions of the poor are directly involved in the process of formulation and implementation of decisions affecting their lives.

## II

The 73rd Constitutional Amendment Act, 1992 is a significant milestone in the journey of panchayati raj institutions in Madhya Pradesh. Madhya Pradesh was the first state in the country to enact and implement the panchayatiraj system in the true spirit of the 73rd Amendment Act. The major gain from the Madhya Pradesh Panchayat Raj Adhiniyam, 1993, accruing to the tribal people, was in the field of reservation of seats for their representatives in all the three tiers of the panchayats. The quota of reserved seats for the scheduled tribes was to be in proportion to their strength in the population of the tiers of gram panchayats, janpad panchayats and zilla panchayats.

Though the 73rd Constitutional Amendment Act and the Madhya Pradesh Panchayat Raj Adhiniyam, 1993, which was modelled on the lines suggested by the 73rd Amendment Act, provided respectable spaces to the tribal people in the working of the panchayat raj system, such legislation could not make the tribal communities the sole masters of their socio-political destinies in their homelands. The need was always felt that the institutional structures within the scheduled areas were to be in consonance with the tribal needs, ethos and tribal institutions with which these people were familiar for ages [Purohit 2002]. Also, many of such areas, which were once freely managed by the tribal people themselves, for example, the management of their forests, lands and water resources, are now out of their purview and are under the authority of external institutions/agencies. Added to such disgruntlements were the voices of the friends of the panchayat raj system as well as of the tribal people themselves who pleaded for more powers to the panchayats under scheduled areas in a way that their institutions, while enjoying decentralised status and functioning as units of self-government, could at the same time preserve and safeguard the traditions, customs and cultural identities of their people.



As a result of such demands and needs of the tribal communities a committee of parliamentarians and experts (22 members) was appointed in June 1994 by the government of India under the chairmanship of Dileep Singh Bhuria. The purpose of the high-level committee was "to discuss and examine the issues relating to extension of the provisions of Part IX of the Constitution of the Scheduled Areas and to make recommendations on the salient features of the laws for extending the provisions of this Part of the Constitution to the Scheduled Areas". When adopted, many of the principal recommendations of the Bhuria Committee were accepted by the union government and the legislation was passed, to be known as Panchayat (Extension to the Scheduled Areas) Act, 1996.

### III

Accordingly, the Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997 was enacted by state assembly. The adhiniyam received Governor's assent on December 2, 1997 and was promulgated on December 5, 1997. While redefining the powers of panchayat raj institutions, the Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997, adds Chapter XIV – A, which delineates the constitution of gram sabhas, gram panchayats, prescribes the mode of reservation of seats for them along with the powers and functions of these bodies/institutions of the scheduled areas. A perusal of the powers and functions of the panchayat raj institutions of scheduled areas and those of the general panchayat raj institutions would show that the former, particularly the gram sabhas, have their distinctive characteristics. Suffice it to say at this stage that the panchayats of the scheduled areas have been assigned some special powers and functions, which are in consonance with the ethos of the tribal people/communities; such provisions bless these bodies with some preferential powers and functions. Though the panchayat raj institutions under the scheduled areas bear the same nomenclatures as those of the general areas, their mode of composition and their

powers vary from panchayats of the general areas. At the foundation level is the 'gram sabha'. It is a body consisting of persons whose names are included in the electoral rolls relating to the area of a panchayat at the village level. As the tribal people live in a scattered manner in the 'phalias' or hamlets/group of hamlets, the act defines a village in the scheduled areas as that "which 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 (its) traditions and customs". Ordinarily, every village shall have a gram sabha, but if the members of the gram sabha so desired, more than one gram sabha may be constituted in the village, keeping in view the habitation pattern of the tribals under a hamlet or group of hamlets. No, less than one-third of the total number of members of the gram sabha shall constitute the quorum for a meeting, and of this number not less than a third should be women members. The meeting of the gram sabha shall be presided over by a scheduled tribe member who will be elected for the purpose by the majority of members present in the meeting. Reservation of seats for scheduled tribes (as also for scheduled castes) in every panchayat of the scheduled areas shall be in proportion to their respective population in that panchayat area. But the reservation of STs shall not be less than half of the total number of panchayat seats. Also, all seats of sarpanch/president of panchayats at all levels in the scheduled areas are reserved for members of the scheduled tribes. In case there is no representation of scheduled tribes in a panchayat in the scheduled areas at the janpad or zilla panchayat level, the state government may nominate persons belonging to STs. However, such nomination shall not exceed one-tenth of the total number of the elected members of that panchayat.

### **Special Powers and Functions of Panchayats in Scheduled Areas**

In addition to the powers and functions as enumerated under Section 7 of the Madhya Pradesh Panchayat Raj (Dwitiya



Sanshodhan) Act, 1997, the gram sabha of a scheduled area has special powers and functions. These are: to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution; to exercise control over institutions and functionaries in all social sectors transferred to the gram panchayat through that panchayat; to manage natural resources including land, water and forests within the area of the village in accordance with its traditions and in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws in force; to advise the gram panchayat in the regulation and use of water bodies; to manage village markets and 'melas' including cattle fairs, by whatever name called, through the gram panchayat; to control local plans, resources and expenditure for such plans including tribal sub-plans, and to perform and exercise such other powers and functions as the state government may confer on or entrust under any law for the time being in force.

This catalogue of powers of scheduled area panchayats convinces one that they have been equipped with special powers for the preservation of tribal identities. The gram panchayat in scheduled areas shall work under the general superintendence, control and direction of the gram sabha.

The most significant aspect of the amendment package is the recognition of the need to safeguard and preserve the traditions and customs of the tribal people/communities, their cultural identities as well as their customary modes of socio-personal relations, including the customary modes of resolution of personal/community disputes. Thus, the panchayats of scheduled areas in Madhya Pradesh will, on the one hand, have the first taste of democratic decentralisation, and on the other, will be able to protect and safeguard their cultural identity, cultural traditions and customs.

Secondly, the history of tribal societies during the past 55 years in India would show that the people of scheduled tribes have lost their rights over land, water and forest. The resource bases of the tribal people were snatched away from them by the 'outsiders' and the tribal

societies were dispossessed by laws such as Land Alienation Act, Mining Laws, Forest Act and Wildlife Act. Tribal societies, after the passing of the Madhya Pradesh Panchayat Raj (Dwitiya Sanshodhan) Act, 1997, should now feel compensated as Section 129-C (iii) empowers the gram sabha in scheduled areas "to manage natural resources, including land, water and forests within the area of the village with its traditions". This would be like regaining 'the lost horizon' for the tribal people.

#### **IV**

More than four years have passed since the new system was put in place. This part presents the field reality of the gram sabha that emerges from discussions with office-bearers of PRIs in scheduled areas. An attempt is made to shed light on the various aspects of the gram sabha in scheduled areas.

The vision of gram sabha in a village situation can be compared with the parliament or assembly. Gram sabha is the most powerful foundation of decentralised governance but unfortunately it could not become a vibrant and important institution at the grass roots level because of local leadership and bureaucracy. Gram sabhas were mostly dominated by sarpanches and small groups of their associates.

It has been evident from the experience of panchayat raj that the level of participation of people at the grass roots level has been very low and gram sabhas are almost a formal institution with no role in various assigned works. The state government transferred nearly all of the powers previously exercised by gram panchayats to the gram sabha. It has thus gone from representative democracy at the grass roots to direct democracy. The fact remains that despite this endeavour there is a clear gap between macro decision and grass roots reality.

It is important to recognise that this faith in the gram sabha is based on several extremely important but largely untested assumptions. It is assumed, firstly, that even in a village society with deep schisms of caste, class and gender, an organic community still exists and that given appropriate legal and institutional spaces, it can act cogently and responsibly as a community. A second assumption is that the collective



decision of the gram sabha would be a more reliable vehicle of good governance than a relatively unencumbered bureaucracy or local elected representatives.

It is certain that unless we have a vibrant gram sabha, we cannot have empowered and accountable panchayats [Nambiar 2001]. In scheduled areas of Madhya Pradesh, the village-level situation is different from the provisions in the amendment. At the state level, efforts have been made to empower the people at grass roots level but the people at large are in different and uninformed about this change. They are not even aware of such an amendment and its provisions [Sisodia 2002].

It is unfortunate that both the grass roots leadership and grass roots bureaucracy have not been able to strengthen the gram sabha. The institution of gram sabha is dysfunctional due to lack of leverage of local leaders to initiate meaningful participation in the sabha and their inability to persuade people to support local initiatives [Fernandes 1999]. It has been evident that meetings called were mostly without prior and adequate notice. In most places, only a formality was observed; proxy meetings were at times convened and proceedings were written even without the knowledge of those who attended. Meetings, if arranged, either proved to be abortive or unsuccessful because of thin attendance [Mander 1999].

The grass roots experiences suggest that a majority of the panchayat representatives and villagers are not aware of the quorum required for gram sabha meetings. The required women's representation for quorum is not known to a majority of the people. The reasons shown for low attendance are mainly the engagements of people in agriculture and labour. Besides this, migration, lack of information, groupism, scattered habitation and negative point of view are other prominent reasons. It appears that the required number of people for a quorum is very high, which needs to be relooked keeping in mind the ground reality.

The panchayat raj institutions in scheduled areas are specially empowered to work as units of self-governance. But it has been observed that the level of awareness and exposure among panchayat

raj representatives is very low. It is therefore important to initiate special training packages in scheduled areas. The provisions of the state act should be translated into simple Hindi and local dialect and should be distributed to all panchayat functionaries in the form of pocket booklets as ready reckoners. Posters can also be prepared and displayed on the walls of the gram panchayat building. It has been often seen that the panchayat representatives find it difficult to perform their duties due to the complicated rules and procedures. It is necessary that the rules and procedures be simplified.

Gram sabhas are provided supreme position in the new system but the people at large are not informed about these provisions. They still accept the supremacy of gram panchayat. It is important to make them aware about such provisions. For this purpose, public awareness campaigns can be launched through NGOs. Electronic media (community television) can also be an effective medium.

Natural resource management at the grass roots level is a significant task assigned to the gram sabha. Traditionally, the tribal society had inherent rights over natural resources, but over a period of time they lost it. The present scenario is gloomy, there is scarcity of water resources and the water level is also declining. The process of deforestation has also been going on for long, resulting in vast patches of barren land. The need of the hour is to create an environment for better natural resource management. The gram sabha has an important role to perform. In this context, there is a greater need of people's participation. Better watershed management, afforestation and land utilisation can pave the way for a better livelihood for the tribals. It can also help in minimising migration. The fact remains that there are few examples of performance in this arena. It is also evident from the field that there are so many committees dealing with different aspects at the village level, such as watershed committee, 'van' committee, 'raksha' committee, but the panchayat raj system in scheduled areas provides all powers to the gram sabha. Therefore the parallel committees, if existing, need to be abolished. It will help in making the gram sabha a strong institution.



Gram sabha has been empowered to safeguard and preserve the traditions and customs of the people, their cultural identity and customary mode of dispute resolution. In this regard, the gram sabha could do something where the traditional leadership of 'jati' panchayat (patel/tadavi) is holding an important portfolio in the gram panchayat with reference to dispute resolution. It is important to consider when talking in terms of traditions and customs that the social evils be kept out of its purview. It is also advisable that traditions and customs are documented for each tribal community through panchayats. With the cooperation of the tribal leadership, a detailed list of tribal customs, traditions and rituals which need to be preserved and protected, should be prepared. This will help in its protection and promotion. Use of liquor and practice of dowry are to be discouraged. In the name of traditions and customs, the promotion of social evils should not be encouraged.

Tribal regions are facing chronic drought, leading to acute shortage of food resulting in starvation and compulsory migration. It is therefore important to prepare panchayats with training and awareness campaigns to face such calamities. Better management skills can reduce the intensity of disasters.

It has been observed that there is no direct involvement of tribals in the execution of the tribal sub-plan despite specific provisions. The panchayat representatives and villagers at large are to be involved from planning to implementation in all development activities. Without people's participation and involvement the targets cannot be achieved.

It seems that only an amendment in the state act and specific provisions for a new system will not change the scenario in the scheduled areas. There is an urgent need to opt for an effective system whereby people can be informed and motivated to come forward for the implementation and execution of panchayat raj system in scheduled areas. There is an urgent need to break the culture of silence, as well as involve in capacity building, sensitisation and orientation to improve the grass roots scenario.

V

The above analysis clearly indicates that the gram sabhas are entrusted with all powers and duties, but the experience of the previous years depicts a disappointing picture. Gram sabha at the grass roots levels in scheduled areas of Madhya Pradesh has witnessed low participation of stakeholders. The state government is said to have been with gram panchayats mainly because they tend to be dominated by sarpanches and small groups of their associates. Chief minister Digvijay Singh is said to have remarked that "I did not expect panchayat raj to become sarpanch raj" [Manor 2001]. This reason has been instrumental in the introduction of the gram swaraj system in Madhya Pradesh from January 26, 2001. It is applicable in scheduled areas as well, provided the provisions of this amendment do not affect the spirit of the Extension Act.

Participation in gram sabha meetings has been low. Low participation can be mainly attributed to the strong caste, class and gender divide in villages. Sarpanches and other influential people dominate in the decision-making process. Two prominent and sharply contrasting groups lead the panchayats – one is group of traditionally influential representatives, and the other that of new entrants. The performance and efficacy of panchayat members is strongly influenced by caste and class distinctions. Gram panchayats are not adequately accountable to the gram sabha. The gram sabha is not informed of the gram panchayat's functioning. The concept of participation as an important part of panchayat raj has been rarely seen in practice. In fact, in retrospect, it seems inevitable that persons of influence would look at larger community participation with hostility.

The vibrancy and efficacy of gram sabha will remain a mirage if it does not possess the capacity to perform assigned roles and responsibilities. This question becomes more pertinent in a socio-cultural milieu where human resource development is low and society is deeply fragmented and hierarchical. Therefore, it is an urgent necessity for marginalised sections of society, which have been kept out of the process of decision-making, to be included in the mainstream through sensitisation and capacity building.



At the micro level, the gram sabha is a people's institution and has been made a statutory body through a constitutional amendment. Panchayat raj system in scheduled areas has provided all powers and duties to the gram sabha. The resource flow to gram sabha and its ever-increasing powers and authority have generated a lot of interest. This interest is likely to translate into a more broad-based and participative leadership at the grass roots level. The need is to address the issue of awareness generation among the people. Training camps, awareness campaigns and audio-visual media can be of critical importance in sensitisation and capacity building.

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## **PESA**

### ***An Act Too Hot To Handle Officially***

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#### **Background**

The 73<sup>rd</sup> Constitutional Amendment Act of 1993, which transferred certain decision-making powers to the Panchayati Raj Institutions (PRIs) did not cover the Scheduled Areas of the country, which enjoy a special status under the Fifth Schedule of Indian Constitution. Subsequently, the Central Government constituted a nine-member Committee of MPs and experts under the chairmanship of a sitting MP Dr. Dillip Singh Bhuria. The committee was assigned to: (i) 'prepare the salient features of the law which may be taken up for enactment by the union Parliament for extending provisions of Panchayati Raj to the Scheduled Areas of the country and, (ii) suggest the variations and modifications to be brought about in other relevant Acts under the Fifth Schedule to further strengthen the system of self governance in the Scheduled Areas'. The committee submitted its report in January 1995 and based on its recommendations the Parliament enacted the new law on the 19<sup>th</sup> of December 1996, known as the Central Act 40 or the Provisions of Panchayats Extension to Scheduled Areas (PESA) Act of 1996 and extends Panchayats to the tribal areas of nine states namely: Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhatisgarh, Orissa



and Rajasthan. The Act u/s 5 suggested these states for mandatory compliance with its provisions by amending their State Acts within a period of one year.

The PESA Act without any ambiguity stipulated the overarching role of Gram Sabha in deciding affairs of its people. In true spirit of democracy the Act recognizes the Gram Sabha (all citizens of a village whose names are enrolled in the electoral rolls) as a competent body to safeguard and preserve their traditions and customs, their cultural identity, community resources and the customary mode of dispute resolution. The Act envisages that Panchayats in the Scheduled Areas are required to seek prior approval of the Gram Sabha for implementing socio-economic development programmes in villages. Consultation (read consent) with the Gram Sabha is made necessary for acquiring land for development projects and before resettling or rehabilitating persons affected by such projects. Similarly, while granting prospecting license or mining lease for minor minerals by auction, prior recommendation of the Gram Sabha is made mandatory for the granting authority.

The Act u/s 4 (n) in very clear terms envisages that the State Legislatures while 'endowing' powers on the Panchayats, have to ensure that *'Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or the Gram Sabha'*. While prescribing wide-ranging powers to the Gram Sabha the PESA Act envisages genuine concern for protection and preservation of livelihood sources of the people in the Scheduled Areas. Thus, the Act endows the Gram Sabha:

- 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 tribals,

- iv) the power to manage village markets,
- 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.

### **Dilution of Key PESA Provisions by the States**

Although the Schedule V states amended their respective Panchayat Acts in compliance with the Central Act, they did so with utmost reluctance. Some of the provisions of the Central Act were so radical that the states found them too hot to handle especially those concerning the Gram Sabha's mandatory role for land acquisition for development projects, grant of concession for lease of minor minerals and prevention or restoration of alienated land of the tribals to its rightful owners. Thus, though the states amended their Acts, they diluted the key provision of the Central Act.

PESA recognizes the traditional rights of the tribals over resources meaning land, water and forest. However, this key-spirit of the Act has been diluted invariably by almost all the states under the Schedule V. As it was envisaged at the time of enactment of the Central Act that all PESA states would amend their existing laws in conformity with the provisions of the Act, it is a matter of great concern that the response of the states has been far from expectation. Laws passed by the states in accordance with PESA guidelines hardly protect the cardinal spirit of the Act.

Land is said to be the life for the tribals but land laws have failed miserably to protect tribals from alienation of their land. Estimate suggests that 48 per cent of the total land in schedule districts is under possession of non-tribals. In Andhra Pradesh alone non-tribals today own more than half the land in Scheduled Areas. Similar violations can be found in almost all states in the Schedule V Areas. In spite of radical steps



envisaged in PESA for restoration of land to the tribals there has been very little achievement, the result being different state governments had framed different kind of protective laws.

PESA clearly empowers Gram Sabha or Gram Panchayat at appropriate level for prior consultation before acquisition of land for development projects. Significantly, all states in Schedule V Areas have diluted this provision. In Andhra Pradesh, Gram Sabha has no role. Gujarat assigned this power to Taluka Panchayat, Orissa assigned this power to Zilla Parishad.

PESA envisages recommendations of Gram Sabha or the Panchayats at the appropriate level mandatory before grant of prospecting license or mining lease for minor minerals. Andhra Pradesh gives no role to Gram Sabha, Gujarat does not make any mention of it. Himachal Pradesh retained primacy of Gram Sabha but the term 'shall be made mandatory' has been replaced by 'shall be taken into consideration'. Maharashtra assigns these powers to Gram Panchayat, and Gram Sabha has no role in the matter. Orissa gives powers to Zilla Parishad.

It is a great irony that while PESA by and large remains unimplemented in almost all sphere, the Ministry of Mines has proposed amending Schedule V of the Constitution itself to open up tribal areas for commercial exploitation by national and multi-national corporate interests. The secret document of the Ministry of Mines, Government of India, No. 16/48/97-M.VI, dated 10<sup>th</sup> July, 2000 proposes the legal advice of the Attorney General for amendment of the V Schedule so as to nullify the implication of Samatha Judgment, which was proving to be an impediment in the way of opening large-scale mining for the corporate sector in the Schedule V areas which are richly endowed with mineral resources.

Another PESA clause lays down that Panchayats at appropriate level and the Gram Sabha to be endowed with



power to prevent & restore tribal alienated land. The Panchayati Raj Amendment Acts in Gujarat, Himachal Pradesh, and Madhya Pradesh do not make provisions for this. Only in Madhya Pradesh, the Land Revenue Code, 1959 has been amended to give power to Gram Sabha.

The Central PESA Act envisages ownership rights over minor forest produces to Gram Sabha. The case of Andhra Pradesh in this regard is quite interesting. The State conferred the ownership rights to the Vana Samarakshana Samitis (VSS) in respect of all NTFPs\*. Similarly, there is no clarity on the issue of 'community resource'. The states have their own interpretations and legislations. While Orissa and Andhra Pradesh are silent about what constitutes community resource, Madhya Pradesh has defined it as land, water and forest. The lack of clarity implies that the powers given by PESA to exercise rights over community resources are almost non-existent in many states.

Though the Central Act has clearly spelt that reserve forests should be considered 'community resources' under the purview of PESA, however, the official assumption in the states is that reserve forests are out of the PESA domain. For instance the Orissa NTFP policy of 2000 restricts the Panchayat's control over minor forest produces in reserve forests. It says that the 'Gram Panchayats shall not have any control over MFPs collected from the reserve forests'. *The PESA, in its spirit, extends ownership of forests to the villagers located at the vicinity of the forest who have been traditionally accessing its resources.*

The PESA Act confers the right of ownership of MFP on Gram Sabha. However, most of the Schedule V states have bestowed this on different bodies. Andhra Pradesh and Himachal Pradesh conferred this right on Gram Panchayat or Gram Sabha and Gujarat, Maharashtra and Orissa bestowed it on Gram Panchayat. In Chhattisgarh, the Forest Department has kept the nationalized forest produce under its control. The rest of

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\*Non-timber Forest Produce



MFP is supposed to be owned, controlled and managed by the Gram Sabha/Gram Panchayat. In Jharkhand the government is yet to confer this right to Gram Sabha.

All states under Schedule V Areas have restricted the ownership right to the areas of Gram Panchayat/Gram Sabha. Gujarat and Maharashtra have excluded national parks, sanctuaries and reserve forests. In fact, Protected Areas, Reserve Forests and Protected Forests are contiguous to the village boundaries, which are not clearly demarcated in most cases; as a result, the implementation of PESA Act is very difficult even if the administration desires to do so. Current status of the Act in PESA states is given in annexure-I.

### **States Reluctance for Popularization of the Act**

The NIRD report (six volumes-2005) which covered almost all major aspects of PESA in Scheduled V Areas indicated that *although confirmatory Acts were passed by the respective states, no state government has formulated the rules, regulations and procedures for implementing these Acts and this could be one of the important reasons for the various departments of government and the officials to remain ignorant of the Act.* Regarding state governments' initiative for popularizing PESA the report indicated that none of the states have made any serious effort in imparting training to the concerned government functionaries, PRI representatives and NGO functionaries in the Scheduled V areas. In fact there has been a total lack of initiative for popularizing PESA. As a result the level of awareness of the Act among various stakeholders varied from 10-35 per cent among the stakeholders in the PESA states. Similarly, people's participation in Gram Sabhas varied between 17-20 per cent.

### **Undermining the Act: States as Culprits**

It is an indisputable fact that despite rights and protections provided under the Indian Constitution that aims to prevent dispossession of scheduled tribes and ensure the

preservation of their unique cultures and livelihoods, these rights are being threatened by the state. The process of consent and consultation as prescribed in PESA Act, is often distorted to serve the interest of project, and not the people. Few pointers in this regard are given below to highlight high handedness of the authorities in complete disregard of the PESA mandate, in order to accommodate the rapacious design of the multinationals.

*The Working Group on Land Relation constituted by the Planning Commission for formulation of Eleventh Five Year Plan (2006) formed a Sub-Committee to document specific violation of PESA Act in Raigarh district of Chhattisgarh. The Committee reported that in Tamnar block the whole 52 Gram Sabhas had passed resolution against land acquisition for Jindal Steel and Power Ltd. (JSPL), however, the State Government granted permission to the company for acquiring land. Similarly, eight villages in Gharghoda Tahsil passed Gram Sabha resolution against construction of Robo dam on Kurkut River, but the construction work is in progress. The district administration in connivance with the JSPL management forced villagers to accept Robo dam proposal.*

*A study on "Tribal Land Rights and Industry Accountability: Case of Mining in Dumka, Jharkhand" (2004) mentioned that the tribals in Pakur district of Jharkhand have been agitating against land acquisition for the past two years. Nearly 1300 hectares of land is being acquired in Singdhehri, Kataldih, Aamjhari, Bishunpur, Chilgo, Pachwara, Talijhari and Alubera villages. The land acquisition is taking place without any prior consultation with the local people and the Gram Sabhas of concerned villages, in full contravention of PESA Act.*

*The Council for Social Development (CSD) conducted a field study in 1999 to assess people's grievances against Alumina Projects in Rayagada district of Orissa, especially the far-reaching adverse impact on the tribals of the area*



particularly in relation to their traditional style of living, livelihood and culture. The team visited four villages: (i) Kucheipadar (UAIL\*, Area), (ii) Bagirijhola (UAIL, Area), (iii) Puhandi (Aditya Birla area), and (iv) Sunger (Larson and Toubro Area). The team found that in village after village the people were not prepared to part with their land. There was a complete lack of trust between the people likely to be affected by the projects on the one hand and the state government and companies on the other. The team found overwhelming evidence of excessive use of coercive methods by the district authorities against the tribals. The team reported that the acquisition of land is being done in an old fashioned and outdated manner, without dialogue, transparency, sharing of information, or discussion on alternatives. In addition, the legal requirement relating to consultation with the Gram Sabhas, envisaged in the Extension of Panchayats (Scheduled Areas) Act, 1996, of the Government of India, has not been followed or given any regard.

Similar story of perversion can be seen at Lanjigarh in Kalahandi district of Orissa where Vedanta/Sterlite is fast completing construction of bauxite project. The district collector of Kalahandi in June 2002 prevailed to hold Gram Sabha meeting to obtain people's consent whereby all 12 affected habitations had boycotted the meeting. Yet, the Gram Sabha was held and people from outside the area were brought in to prevail upon the Sarpanch to provide consent. As a result, homesteads were bulldozed in the three villages namely Kinnari, Barbata & Sindhbahali, and the land was handed over to Vedanta/Sterlite.

With the mad rush for development in the era of globalisation, the lives and livelihoods of the tribals are under greater threat since the Schedule V areas have rich deposits of iron ore, bauxite, coal etc. which are the special targets of the multinational companies. There is a virtual 'gold rush' with

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\*Utkal-Alumina International Limited.

ever increasing vigour unmindful of people's resistance. For exploitation of these resources the government of Orissa has signed 43 memorandums of understanding (MoUs), 54 by Jharkhand and 48 by Chhattisgarh. It doesn't require much imagination to assess the extent of dispossession and deprivation, tribals are likely to face once these MoUs are operationalised. In Orissa alone mining projects worth 3,000 billion rupees have already been launched and projects worth a further of Rs. 11,000 billion are in pipeline. Similarly, in Jharkhand one million crore rupees and in Chhattisgarh 48 thousand crores rupees worth of projects are being considered by the state governments.

### **Strengthening the Gram Sabhas: A Key to Success**

In all Scheduled V areas the state laws have generally taken advantage of the provision 'Gram Sabha or Panchayats'. Thus, the Gram Sabha has been completely ignored for statutory consultation regarding acquisition of land for development projects and before resettling or rehabilitating persons affected by such projects, grant of prospective license for minor minerals and for grant of concession for the exploitation of minor minerals by auction. Hence, the authorities are unabashedly diluting the spirit of PESA, which envisages the primacy of Gram Sabha in decision-making concerning their lives and livelihoods. Urgent measures are required to check this dilution.

A major problem being envisaged is the evidence of large-scale manipulations of Gram Sabha records by the administration and political executive who are otherwise entrusted with duty of protecting the tribal interest. Manipulations are being carried primarily to accommodate the rapacious interests of corporate sector. A mechanism to check such manipulations needs to be put in place at the earliest. Besides, documentation of the wide spread violation of PESA provisions needs to be undertaken at the earliest to highlight high handedness of



the authorities responsible and also to campaign for ensuring effective measure for prevention of such violations.

### **Community Resources: Priority Areas for Concern**

State governments, perpetuating the colonial legacy, have continued to privatise or skillfully acquire community resources, especially forests, which have been protected for long by local communities, for revenue. The most common method employed in this regard has been leasing out forestland for non-forestry purposes and clear felling natural forests – officially defined as 'degraded forests' – for commercial plantation. There are umpteen examples of standing sal forests being clearly felled by the Forest Department in most parts of Orissa, Chhattisgarh and Jharkhand to plant teak, thus depriving the forest dependent populace of their livelihood. As a result, the benefits of forests that could have sustained millions of forest dwellers are cornered by a selected few by way of revenue and profit.

It is important to mention that a major chunk of the forest revenue, nearly 80%, is generated through the sale of NTFP in most of the PESA states. People in these states depend on forest resources for sustenance for nearly 6-8 months of a year. In addition, large number of forest fringe villages in these states has been protecting forest for ages. In Orissa alone, 10,000 villages are engaged in protecting about 2mha of forest. Unfortunately, with the introduction of JFM in early 1990s this symbiotic relationship of tribals with the forest was abruptly eroded because it refused to recognise the already existing village institutions engaged in protection of forest. The new concept introduced by JFM was to promote Vana Sarankshan Samiti (VSS), which became a yardstick for promotion of forest officials. In their hurry to fulfill targets, officials unscrupulously started promoting VSS, thus undermining the existing indigenous efforts of people. The forest officials are also engaged in increasing protected area network of forest, which by virtue of the provision of the law squeezes the community right. Strangely, though most of the protected areas are in Scheduled V areas, the provisions of PESA do not apply there. Similarly, while amending the Wild Life Protection Act in 2002, the provision of PESA was ignored.



The definition and classification of MFP has not yet been clarified in several states. The distinction between MFP and NTFP is a contentious issue causing a great deal of tension between the forest administration and people who are depending solely on forest resources for livelihood. Kendu leaves and Sal seeds, the most valuable produce are nationalized and placed under state's control whereas relatively low value produce are classified as MFP. Orissa has taken a progressive step in this regard by conferring right of collection of Sal seeds and Kendu leaves to Gram Panchayat. Cane and bamboo, other two very important produce are also under contention whether to be a part of MFP. It is a common knowledge that tribals' livelihood is significantly depended on these resources. Although, ownership of MFP is supposedly conferred to the Gram Panchayat/Gram Sabha, studies revealed that the state governments have by and large ensured that the rights granted by PESA remains ineffective.\*

The CPRs, especially the village commons are in perpetual conflict between the people and government, on account of its legal ownership and access. Traditionally, the tribal communities have been the owner of CPR, which was taken away from them once forest administration was introduced first by the colonial rulers and after independence by the national government. In spite of persistent demand by several concerned people including tribal community leaders, the conflict remained unresolved due to the anti-tribal mindset of the government functionaries especially the forest administration.

The provisions of National Water Policy and State Water Policy are at variance with the provisions of PESA regarding its management, especially the 'minor water bodies'. The PESA lays emphasis on communities' traditional and customary rights and empowers the Gram Sabha to manage this leaving the water policy to the Panchayats. Significantly, the National Water Policy also entrusts the Panchayats with planning and management of 'minor water bodies'. However, it is a matter of great concern that the term 'minor water bodies' remains vaguely undefined in the large body of law governing water and water bodies which creates a scope for confusion at the

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\*Self-Governance for Tribals, Vol. III, NIRD, 2005



local level. Further, the National Water Policy upholds private sector participation and under the guise of planning, development and management of water resources projects, the policy encourages private sector ownership at the cost of community ownership of water resources. An overview of these laws shows that in most states only 'planning and management' of such minor water bodies are being entrusted to Panchayats whereas the question of ownership is not addressed.\*

### **Conformity of State Laws/ Acts with the PESA**

In order to make the Central Act effective, it is necessary for the state governments to make appropriate amendments in their state Laws/Acts which impinge on specific provisions contained in the Central Acts namely (i) Land Acquisition Act; (ii) Excise Act; (iii) State Irrigation Act; (iv) Minor Forest Produce Act; (v) Mines and Minerals Act; (vi) Land Revenue Code/Act; (vii) SC/ST Land Alienation Act; (viii) Money Lenders Act; and (ix) Regulated Market Act.

### **Minimal NGOs can do**

In view of the wide spread ignorance among civil society organizations about PESA, dissemination of the Act should be undertaken on sustained basis through literatures in regional languages, organizing conventions, campaigns etc. for building mass awareness. Capacity building of various stakeholders engaged in development activities in the Scheduled Areas on various provisions of PESA so as to ensure the sanctity of the Gram Sabha. Networking of concerned organizations and institutions engaged in development activities in Scheduled Areas to play a watchdog's role for successful implementation of the Act.

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\*Self-Governance for Tribals, Vol. III, NIRD, 2005

### Current Status of PESA Act (Functional Devolution)

Sl. No.	Components	Mandatory Provision	Status in States
	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	All States adopted this definition except Maharashtra, which is silent on this subject
	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, their cultural identity	All State Acts follow the Central Act. However, regarding customary mode of disputes resolution, Andhra Pradesh Act puts a condition that it will be subject to without detriment to any law for the time being in force'. The 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



Sl. No.	Components	Mandatory Provision	Status in States
3	Constitution of Panchayat	Panchayats will be constituted at village level with reservations for Scheduled Tribes in the manner prescribed in Part IX of the Constitution	Andhra Pradesh and Himachal Pradesh Acts have extended the reservation of elective seats and Chairpersons to both Gram Panchayats and Mandal/intermediate Panchayats. The Maharashtra Act does not mention it.
4	Acquisition of land for development projects and resettlement of displaced persons	Prior consultation with Gram Sabha or Panchayats at the appropriate level shall be made mandatory	In Andhra Pradesh, Gram Sabhas have no role; Gujarat assigned this power to Taluka Panchayat, however, no provision relating to coordination of such projects at state level. Orissa assigned the power to Zilla Parishad with no role for the Gram Sabha/Gram Panchayat
5	Planning and Management of Minor Water Bodies	Entrusted to Panchayats at the appropriate level	Maharashtra Act does not make any mention of it. Orissa assigned power to Zilla Parishad instead of Gram Sabha/Gram Panchayat
6	Grant of Prospecting license or mining lease for minor minerals	Prior recommendations of Gram Sabha or the Panchayats at the appropriate level shall be made mandatory	Andhra Pradesh gives primacy to Gram Panchayat in place of Gram Sabha, Gujarat does not make mention of it.

Sl. No.	Components	Mandatory Provision	Status in States
			<p>Himachal Pradesh retained primacy of Gram Sabha but term 'shall be made mandatory' has been replaced by 'shall be taken into consideration'.</p> <p>Madhya Pradesh- No mention in the Madhya Pradesh Panchayat Act but the relevant subject Act Mines and Minerals (Regulation and Development Act) 1957 amended to assign powers to Gram Sabha and Panchayats at appropriate level.</p> <p>Maharashtra assigns powers to Gram Panchayat. Gram Sabha has no role in the matter.</p> <p>Orissa gives powers to Zilla Parishad</p>
7	Grant of concession for exploitation of minor minerals by auction	Prior recommendation of Gram Sabha or Panchayats at appropriate level shall be made mandatory.	<p>Andhra Pradesh and Maharashtra assigned the function to Gram panchayat in place of Gram Sabha.</p> <p>Gujarat- No mention of it.</p> <p>Madhya Pradesh - Madhya Pradesh Panchayat Act does not make mention of it but the Subject Act Mines and Minerals (Regulation and Development) Act, amended to assign the power to Panchayat at appropriate level.</p> <p>Orissa- assigned the power to Zilla Parishad</p>



Sl. No.	Components	Mandatory Provision	Status in States
8	Enforce prohibition/ regulate or restrict sale & consumption of any intoxicant	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers	All State Acts followed the Central Act Except Madhya Pradesh, which does not make provision for it in its PR Amendment Act. However, the subject Act Madhya Pradesh Excise Act 1915 has been amended to give powers to Gram Sabha
9	Ownership of Minor Forest Produce (MFP)	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers	All State Acts follow central Act by assigning this power either to Gram Sabha or to the Gram Panchayats
10	Prevention & Restoration of Tribal Alienated Land	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers.	Gujarat, Himachal Pradesh, Madhya Pradesh Panchayati Raj Amendment Act
11	Manage Village Markets	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers.	Gujarat and Maharashtra Amendment Acts are silent on this matter.

Sl. No.	Components	Mandatory Provision	Status in States
12	Money lending to the Scheduled Tribes	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers.	Madhya Pradesh Ammendment Act does not make a mention of this subject
13	Exercise control over institutions and functionaries in all social sectors	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers.	All States Acts except Madhya Pradesh assign this power either to Gram Panchayat or Panchayat Samiti/Mandal Parishad. The Madhya Pradesh Amendment Act has given this power to the Gram Sabha and the Janpad Panchayat or the Zilla Parishad.
14	Control over Local Plans and Resources including Tribal Sub Plans	Panchayats at the appropriate level and the Gram Sabha to be endowed with the powers.	State Acts of Andhra Pradesh, Gujarat, Himachal Pradesh, Orissa have assigned the power to Panchayat Samiti/Taluka panchaayt/Mandal Parishad while the Madhya Pradesh and Maharashtra Acts assign this power to Gram Sabha.



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## **Tribal friendly PESA at the Grass Root Putting the Act on the Acid Test**

**Harihar Das\***

Elwin Gabesana Parisada

Tribal people have their inbuilt indigenous culture. It likens to yolk and egg white in terms of its in alienability. The culture, polity nexus works fine when the island of little ethnic society was considered as a virtual world. The little society has nuanced tradition and customs and customary law, its interplay, provided the stabilization to the tribal society.

PESA- Panchayat Extension to Scheduled area act is a legal mechanism to co-opt the essence of the ethnic culture, customary law under the frame work of the constitution to ensure tribal participation in their development process as an active stakeholder. The act was culmination of a process that has been searching the micro reasons behind tribal people's recoiling from the development process. The act in a sense focused on the integration of tribal people as opposed to assimilation. The act is largely a remedial measure, removing the dysfunctional aspects of development planning having mainstream bias.

The act is an extension of the revamped panchayat institutions brought about by 73<sup>rd</sup> constitutional amendment, to the scheduled area. The extension in fact co-opted the tribal specific peculiarities in to the body of the act. The projected target is to help the tribal people to become active participants instead of passive beneficiary of the development largesse doled out by Govt. interventions. The act, as a catalyst provides ample scope for them to become the maker of their own destiny.



In short the act paved the way for a genuine tribal self rule. The frame work of the act was laid down by the Bhuria committee report which was legalized through the provision of the panchayats (extension to scheduled areas) Act 1996.

The PESA Act 1996 has made it mandatory for the states having Schedule areas to make specific provisions for giving wide ranging powers to the tribals on matters relating to decision, making and development of their communities.

It gives radical governance power to the tribal communities and recognizes its traditional community rights over local resources. The act not only accepts the validity of customary law, social and religious practices and traditional management practices of community resources but also directs the state Government not to make any law which is inconsistent with these. It accepts the clear cut role for the community, and gives wide ranging powers to Grama Sabhas which had hitherto been denied to them by the law makers of the counting.

### **The Orissa Scenario**

Government of Orissa, as required amended its Gram Panchayat Act, 1957, to facilitate passing of conformity legislation to the central act to incorporate the provisions of PESA. In course of time as it was desiderated by the act devolution of power to the PESA sponsored Panchayat was effected. The election was held under the new Act. The operationalization of the act now becomes decade's old. It is now time to measure the impact of the act in terms of the goals achieved as desiderated by the spirit of the act.

The PESA act, unfortunately, is not impacting the Scheduled area and the tribal stakeholders inhabiting in it. The reasons are complex manifold and multi pronged. The prominent reasons are

- Lack of awareness of the tribal people,
- Lackadaisical implementation by the grass root officials,
- Other laws and provisions contradict the PESA act.
- Other Gray areas.

As regards to the creeping deficit of awareness regarding the function the PRIs, the study of ISED, B. Pande and others is very much illuminating. The study is based upon the attendance in the Pallisabha/ Gramapanchayat and the basic idea on the functions of the PRIs. The inputs of the study may be summed up which are as follows.

- Attendance of Gram Sabha Members 51% and female members below 40%

- 33% GS members (50% Females) have no idea about the approval of socio-economic plans and programmes, identifying beneficiaries.

- 52% have no idea about the power of controlling MFP

- 31% for controlling communal/ forest and 85% on the issues of tribal traditions and cultural practices.

- None of the women know if the women issues are being discussed in the GS and GP meetings.

- No active involvement in Gs/GP meetings due to lack of awareness of GS members and PRIs.

- Around 92% female GS members, 85% female Ward members, 54% Samiti Members, 30% Sarapanches and 20% Chairpersons have no ability to interact with Officials. In Bonai area only 2% women are attending the Gramsabha and their relatives enjoyed almost all the powers of women PRI Representatives.



- The newly elected PRI Representatives have little experience and knowledge in administrative affairs, development intervention and political functioning.

- A synergistic approach for creating mass awareness about the PESA Act among the tribals should be developed at all level.

The field functionaries connected with the grounding of the act used to take the tribal stakeholders for granted. As a result they are attuned to cold shouldering of the implementation. They are often confused with the domination of other existing laws on the same matter. The mention may be made of forest and Conservation Act, Pani Panchayat dual management village markets by RMRS and Gram Panchayat etc.

There lurks confusion between Palli Sabha and Grama Sabha. Grama Sabha steals lime light depriving the Palli Sabha of remote hamlet for having a voice in the development planning.

The ubiquitous political parties hold the remote control for influencing the decision of Grama Sabha and the traditional village council and the traditional leaders are relegated far behind.

**The Book "Governance in Tribal Area":** - myth and reality an Agramee Publication documents the hiatus between expressed provision of the act and the reality situation at the grass root under myth and reality caption. The hiatus may be bridged before when the PESA Act hits the target. It may be expressed as follows.

Myth	Reality
Every Gram Sabha shall be competent to safeguard and preserve their community resources.	MoUs for mining and industrialization are signed between the Government and MNCs, with no participation of knowledge of the affected tribal people.
The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Area for Development projects.	Gram Sabha consultations for land acquisition are organized by the district administration, in the presence of armed police force.
Gram Sabhas are endowed specifically with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore unlawfully alienated land of Scheduled Tribe.	The Government's decisions to lease out tribal people's land to multinational corporations are enforced by state.
The Gram Sabha in the tribal areas are endowed specifically with the powers to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.	The State Government has decided to open 2000 liquor shops in different districts. In the tribal areas, the Sarapanch is made to give his/her signature which is taken as Gram Sabha consent for opening the liquor shops.
The Gram Sabhas in tribal areas shall approve plans, programmes and projects for social and economic development before such plans and programmes and projects are taken up for implementation by the Panchayat at the village level.	Schemes, programmes and projects are formulated and decided by the Central and the State Government. The Gram Sabha only has the power to select the beneficiaries, and approve the village committee leader in whose name the village work will be sanctioned.



Myth	Reality
Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilization of funds by the Panchayat for the plans, programmes and projects implemented by it.	Gram Sabhas are almost never held on the due date. Inevitably, a second Gram Sabha is organized without proper information and the decisions are passed by the proxy, provisions.
Every Gram Sabha shall be responsible for identification of persons as beneficiaries under the poverty alleviation and other programmes.	The beneficiaries are decided in the Panchayat Office, regardless of Gram Sabha decisions, depending on the Commissions paid.
Reservations is provided in favour of SC, ST, OBC according to their population percentages.	Party politics controls the elections to all seats of the three tier system of Panchayati Raj.
one third reservation for women in every tier of the Panchayat Raj.	Candidates on seats reserved for women are inevitably relatives of former male representatives. Gender norms do not allow women to go without her husband to Panchayat meetings. Nor can a women raise her voice on any issue in a public meeting. An elected women representative is always accompanied by male a relative, who takes all decisions for her.
The Gram Sabha is the centre for decision making in a Panchayat.	The Government officers control all decisions as all information, and funds pass through them.

It is presumed from the preceding discussion that mere legislating an Act is not enough unless the stakeholders for whom it is meant are very much active in grounding the provisions of the act. Though more than 10 years has elapsed away the act is yet to hit the target. It is very much imperative that the beneficiary of the act should have right consciousness for realizing its potentiality in toto. Development of consciousness level is very much dependant upon right education which makes a man informed. Precisely speaking education constitutes the foundation upon which the edifice of the tribal development is to be built.

The literacy scenario of the tribal peoples is not up to the mark. The female literacy rate is horrible. It is therefore very important that the tribal people needs to be educated for moving on the right trajectory of growth and all round development.

## **IN MAKING PESA ACT 1996 PEOPLE-FRIENDLY IN ORISSA: AN OVERVIEW**

**Prof. R. M. Mallik<sup>1</sup>**

Historically, tribal communities have had a chequered history of struggle against the British Rule and Imperialist Administration for their concerted drive towards oppressive and exploitative measures to meet their very limited interest of extracting greater revenue from the natural resources at the cost of sustainable livelihood interests of the tribals, besides causing a great deal of environmental insecurity and environmental hazards. However, towards 1890s and early 1900s, the Britishers seem to have favoured in formulation of a very few protective measures for the development of tribal regions. This resulted in identifying and demarcating scheduled areas to safeguard and protect the interests of the tribals. At a later stage, there came the provisions in the V and VI schedules with respect to powers, privileges, rights and responsibilities and accordingly, Article 46 of part IV, Directive Principles of State Policy came up, where a lot of specific provisions were made not only to promote educational and economic interests of the poor Scheduled Caste (SC) as well as Scheduled Tribe (ST) population, but also, to protect them from exploitative interests as well as social injustices.

But, today in reality, many existing Forest Policies, Rules, Regulations, Laws, Acts and Administrative provisions formulated prior to Independence, and even the Forest Policy 1952 (with respect to utilization, development and management

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of local natural resources) have very successfully countered to their livelihood interests in varieties of ways instead of assisting such disadvantaged group of tribal population in any way.

Many micro-level research studies conducted in the context of Orissa reveal that forest-independent communities, and tribals in particular in the forest-based regions have become the prey in the hands of the vested interests, rich peasants, middlemen, and many a time by the government from time to time. In subsequent stages, it was noticed that the tribals have been successfully alienated from their basic sources of livelihood, such as: land, forest, and water in which the state of Orissais richly endowed with. As a result, we find today not only the highest incidence of poverty of 40.0% (Both N.S.S., 2004-05) in Orissa, but also, as much as 86.0% of tribal population (of total tribal population) below the poverty line (Panchayati Raj, GoO, estimates 1997). They live in abject poverty, and many of them are vulnerable as well as imperished, when measured in terms of any socio-economic indicator. In the recent years, they are found to be increasingly alienated from managing their local national resources, and also form the centre of governance not only due to the introduction of varieties of irrigation and hydro-electricity projects, but also, large number of mineral-based Steel/Aluminium industries, (besides massive extraction of exhaustible mineral resources) in the forest-based regions.

For nearly four decades of so, though the environmentalists, conservationists, foresters, resource scientists, development planners, policy makers, scientists etc. have grossly failed to reach at some consensus to draw a set of policy strategies as to how a sustainable source of livelihood from natural resources could be made available to the tribal communities dwelling in and around forests. The differences in their perceptions on the issues; such as: preservation of biodiversity, ecological sustainability, environmental security, preservation of watersheds and rivers, revenue maximization

etc. seem to have frustrated their common endeavour to draw a set of people-friendly as well as environment-friendly policy strategies.

However, the New Forest Policy (NFP) 1988 and the Forest Conservation Act 1980 are a very few, which seem to have adequately recognized the livelihood interests of the forest-dependent population as well as environmental security in a big way. Needless to say that in Orissa or elsewhere in the country, the future human needs for food, water, health, energy and settlements in the forest-based regions to a large extent depend on how forests are managed, which primarily determine the level of living and quality of life of the forest-dependent communities. Thus, arises concerted efforts not only for its conservation/security, but also, for its suitable development, and so also, management, which can be perpetuated continually for many human generations. In this context, nature no doubt provides the grist to meet those requirements, but there are social organizations, individual decision makers, but not nature which seems to have determined such ecological requirement. That impact is the centre of controversy, which not only undermines forest resource management, but also, serves environmental/ecological safety.

However, in the context of PESA 1996, (on the recommendation of the Bhuria Committee Report), all states of the Indian Republic were asked to adopt the law within one year, and Orissa did it at the last hour amending the Orissa Gram Panchayat Act 1997. In point of fact, PESA Act 1996 granted wide ranging powers to the tribals with respect to (a) decision making in utilization and management of local natural resources; (b) development of tribal community; (c) radical governance powers to the tribal community; (d) recognition of traditional community rights over local natural resources; (e) recognition of customary laws, social and religious practices; (f) traditional management practices of community resources. More importantly, the state governments were asked not to



make any law that counters to the livelihood interests of the tribal communities managing the community resources. Similarly, PESA 1996 provides wide recognition and grant of wide ranging powers to "Gram Sabha" in the matters of (a) protection to local natural resources, (b) control over social sector functionnaries and approval of all developmental plans; (c) control over minor forest produces; (d) management of Water Bodies; (e) recommendation to mining leases; (f) consultation in land acquisition; (g) identification of genuine beneficiaries to benefit form varieties of poverty Alleviation Programmes and (h) decision over developmental projects.

The PESA Act 1996 will remain as a legend in the history of governing local natural resources at the grass roots level due to the fact that the 'gram sabha' has been granted huge powers for ensuring effective management of such local natural resources owing to; (i) local people at the village level are keenly acquainted with the available local resources, and therefore, could make effective as well as scientific use of local resources due to their rich indigenous knowledge, experience and wisdom at the local level; (ii) the benefits of effective utilization of local resources would accrue directly to the villagers; (iii) direct involvement of the people at the village level in the utilization and of local resources which could entail self-pride.

It appears therefore that the PESA 1996 precisely aims at; (i) to provide adequate space for peoples' empowerment; (ii) to ensure genuine peoples' participation in governance; (iii) to foster community action on resource planning utilization and management; (iv) to successfully implement people-centered developmental programmes. But, whether the PESA 1996 has successfully been effected in the Indian States and Orissa in particular in letter and spirit, and has really empowered people in governance process for ensuring their active participation in the people-centred developmental programmes is a moot point.

Infact, many state governments including Orissa seem not to have implemented laws in conformity with the central law. Lack of 'political will', sincerity of purpose and stereotyped mindset of the officials as well as peoples' representatives has increasingly led to bureaucratic creativity of minimalistic interpretation of the law. Evidently, the Orissa Gram Panchayat Act 1997 amendment seems to have diluted the powers, functions and responsibilities granted to 'Gram Sabha' under the Central Act. It simply says "Gram Sabha shall exercise such powers and functions in such a manner as prescribed".

Such interpretation and application of the Central Act in amending the Orissa Gram Panchayat Act initially is a reflection of apathetic attitude, indifferent spirit and bureaucratic mindset of the State Government in trying to increasingly alienate the disadvantaged group of tribal population from the centre of governance as well as the mainstream of public life, instead of facilitating them to benefit from the people-centred development programmes by exercising their legitimate powers, functions and responsibilities.

Undisputedly, a critical examination of a couple of cases based on grass roots level realities need intersection. Many research studies (Mallik 1994, 1996, 2002, 2004, Saxena, 1997, Farnandes, 1996) reveal that the State Forest Department (F.D.) has become the most visible oppression-machinery and along with the stringent Forest Laws, Acts, Rules and Administrative Directives, the provision of ownership over Minor Forest Produces (MFPs) in the PESA 1996, instead of alleviating the distressing economic conditions of the primary gatherers, have severed their livelihood status in the forest-based regions. The growing inaccessibility of the tribals to their primary source of livelihood; forest, form where as an average they use to derive 20% to 50% of annual income form sale of MFPs, (besides, food subsistence, small timber, fuel wood, fodder etc.) despite suitable provisions in the Central Act, seem to have further alienated them for some reasons or the other. Further,



deprivation in terms of limited processing, exploitative markets for MFPs, minimal prices and distress sales etc. despite their very untiring protection and conservation of forest resources, has accentuated their miseries resulting in perpetuation of that poverty in the chronic form. Though, Joint Forest Management (JFM) introduced in the State since 1993 is now at the protective stage, the inter-village, intra-village conflicts in most of the JFM villages, in the state and the super-active role of the government (as the Partner in JFM), non-recognition/non-grant of legal status to the Vana Sarakshyan Samities (VSSs), Village Forest Protection Committees (VFPCs), Forest Protection Committees (FPCs) seem to have increasingly diluted the livelihood interests of the tribal poor.

It is pertaining to point out that on the issue of ownership over the MFPs, the State government argues in favour of power of 'gram sabhas' to be extended only to forests located in the revenue boundaries of a village – Thus, Reserves forests in the scheduled areas do not come under the purview of 'gram sabha'. But, the spirit of the law is to extend ownership rights over the MFPs to 'Gram Sabha' located in the vicinity of the village of their traditional access irrespective of forest categories. Further, ownership over MFPs (excludes cane and bamboo) by the 'gram sabha' does not provide the right to take any decision relating to stewardship, management or sustainable harvesting of MFPs, since ownership by the 'gram sabha' may lead to destruction of precious forest resource, and could sever the livelihood of the forest dependant population. However, in the PESA 1996, the ownership is reinterpreted to mean the right to net revenues incurred from MFPs after retaining administrative expenses of the Forest Department. These interpretations (to our mind) indeed seem to have undermined the concept of 'ownership' and more importantly control of the local resources by the 'gram sabha' incorporated in the PESA Act 1996.

Needless to say that in order to make the PESA Act more operational and people-centred, many of the state laws need to be suitably amended in conformity with the Central Act 1996. In this context, and the State Government seem to have attempted in many of the followings, but definitely not at all in the spirit of the Act. The NTFP Policy in March 2000 of the Government of Orissa, and the amendment the Panchayat Act in November 2002, bear testimony to the indifferent attitude of the government for not addressing the control issue in letter and spirit. Needless to say that the Gram Panchayat Act, Excise Act, State Irrigation Act, Minor Forest Produce Act, Mines and Minerals Act, land Revenue Code/Act, SC/ST Land Alienation Act, Money Landers' Act, Regulated Market Act, etc. need suitable amendments/revisions for ensuring an effective as well as efficient management of the local natural resources. A cursory review of such amendments (if any) to the above Acts reveal that most of the State Acts in Orissa have assigned meager/limited provisions to 'gram sabha'/'GP' in the scheduled areas as envisaged in the Central Act, resulting in misuse of local natural resources by the vested interests, industrialists and also, by the government in the name of developmental activities; such as: irrigation, hydro-electricity, mineral based steel/aluminium industries, extraction of large mineral resources for purpose of exports in the forest-based tribal regions of the state without the approval/knowledge of the 'Gram Sabha' and 'GPs' in the locality. This bears strong violation of the PESA Act 1996 and also, the Central Forest Conservation Act 1980. The over-exploitation of mineral resources from the forest-based and tribal dominated forest regions in recent years are feared to have created a situation of inter-generation inequity in the use of local natural resources and not mere violation of the Central Act. But this also, may further severe the livelihood interests of the local people, besides causing a great deal of environmental/ecological insecurity as well as endangering preservation of the biodiversity in a big way.



The role of 'Gram Sabha'/'GP' has been further undermined, when the state government witnesses a complete departure from the Central Act by assigning more powers to the Zilla Parishads (ZPs) not to 'Gram Sabhas' on the following; (a) in requisition of land, resettling and rehabilitation affected by land acquisition; (b) in grant of licenses/mining lease for Minor Minerals; (c) in grant of concessions for exploitation of Minor Minerals on auction; (d) in planning and management of Minor Water Bodies. In such a situation therefore, a lot of advocacy is now needed to reverse the existing situation in order to empower the 'Gram Sabhas'. It is pertinent to point out that there are growing apprehensions over the restricted role of 'Gram Sabha'/'GP' in the utilization and management of local natural resources (despite the provisions in the Central Act 1996), and this precisely, may cause not only growing alienation of the indigenous communities from the management of the local resource, but also, such oppressive consequences may lead to naxalite activities, violence and unforeseen exploitive situations in the forest based tribal regions of the state.

Further, the provision of 'Mandatory Consultation' with the 'Gram Sabha'/'GP' (incorporated in the PESA Act) at the appropriate levels and acquisition of forest land and grant of mineral lease/auction seem to have been willfully over locked in the name of the so called 'empowerment' of grass roots level institutions. The purpose seems to have been vicious to make it very specific, since it was interpreted that the tribals may own land, but they have no control over it, and therefore, they by and large, fail to put it in to productive use-thus, losing control over the natural resources. Though, the provisions were incorporated in the Act so as to safeguard the interests of the local indigenous people level and therefore, it was obligatory, it is being realized that there is no merit in these provisions, since, these are not put into action. The far-reaching changes made in the law may remain in disuse, unless these are

translated into action through a process of 'awareness' and skill upgradation/building activities of the tribal communities in the remote forest-based tribal regions. Such efforts/attempts by the State Government seem to have been very restricted/limited resulting in local people at the grass root level to remain away from the centre of government of the local natural resources that directly determines their livelihood.

It seems the growing agitations/violence in the recent times in the tribal – based forest regions of Orissa seem to be the manifestation of the sheer neglect of the livelihood interests of the tribal people, besides, ignorance of their settlement and rehabilitation issues caused by massive displacement. More importantly, the growing environmental insecurity, threats to biodiversity caused by growing developmental project activities in the tribal-dominated forest regions seem to have severed agricultural activities, availability of ground water and safe drinking water, clean air and safe livelihood. Thus, the prospects for a better quality of life in the tribal regions have been remote. As a result, we find today, reflections of their frustrations and illiteracy, ignorance/unawareness, growing miseries, severe indebtedness, vulnerability and impoverishments in the form of violence and naxalite activities.

The STs alongwith SCs constitute as much as one-third of total population in Orissa (22.2%) and 14.6% respectively), and bulk of them live in abject poverty, since 86.5% of the tribal households in Orissa are BPL (Panchayati Raj, GoO, 1997) households. Many evaluation studies of the rural development programmes, anti-poverty as well as special economic development programmes such disadvantaged category of population have grossly failed to reap the developmental benefits during the last five decades of economic planning. Lack of effective monitoring of the programmes, transparency in implementation, absence of social auditing, illiteracy, ignorance, poverty etc. seem to have made them more vulnerable and impoverished. They need much more attention and priority in



developmental discourses to secure sustainable source of livelihood through their effective participation in local natural resource management and governance process in the forested regions. But, if present policy continues as it has to of date, treating the disadvantaged group of population as being the transient poor, but a little bit "further behind", then hundreds of people are likely to stay poor and many of those yet to be born will spend their lives in poverty.

Time is very ripe now to reform the mindset at the bureaucracy, policy, planning and also at the government level to take stock of the present situation, and instantly implement a host of specific people-friendly as well as environment-friendly policy measures in the forest based tribal regions of the state notwithstanding the pivotal role of the grass roots level institutions like 'Gram Sabha' and 'GP' in the effective utilization and management of local natural resources.

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# **THE SCHEULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RITHTS)ACT, 2006: A CRITICAL VIEW ON FOREST POLICY, PRACTICE AND OPERATIONAL ISSUES**

**Dr. A. C. Sahoo**

Article 21 of the Constitution guarantees rights to life and personal liberty. The Supreme Court has expanded the scope of this article. The Supreme Court, through its cases, has interpreted "that the right of life is not merely confined to physical existence but also includes right to live with human dignity and includes adequate nutrition, clothing, shelter, tradition, culture, heritage and protection of that heritage in full measure".

The tribals are basically forest dwellers and they collect, food, materials to build houses, fuel for cooking, fodder for the cattle, herbal medicine for their health and several others for their day-to-day necessities, from the forest. Forest gives shelter to their Deities, Gods and Goddesses satisfies the deep rooted sentiments of their life. They depend on forest for generations because it provides them security. The forest ecology and resources are based on their life and they have been maintaining a symbiotic relationship and their existences are mutually beneficial. Due to entry of the outsiders as well as growing tribal population, the symbiotic relationship got imbalanced for which the then Government thought of national forest policy. Forest policy is a broad guideline for planners



and administrators which lays down the objectives and mode of execution to achieve the goal. Taking into account the climatic and biotic conditions of different zones of the country the policy decided the extent of area and its management. The first forest policy was formulated in the year 1894. The main objectives were to promote well being of the country, preserving climatic and physical condition of the country & fulfilling the forest needs of the people.

The national forest policy was revised in 1952 following basic principles for management of the forest of the country and to derive maximum benefits directly or indirectly. This policy emphasized on coverage of forest in 60% of geographical areas in hilly region and 20% in plains, in order to retain forest in one third of the total geographical areas of the country. It also classified the forest on basis of its function such as protection forests, national forests and village forests and subordinated the claims of the community to national interest. In the year 1988 the national forest policy was enunciated mainly on the management of the forests of the country. The basic objectives were maintenance of environment, conservation of natural heritage, checking of soil erosion and denudation in catchments of rivers etc. Further aimed at massive afforestation and social programmers to meet the requirement of fuel wood, fodder, minor forest produce and timber needs of rural and tribal population. It also emphasized on productivity of forests, efficient utilization of forest produce and movement to minimize pressure on existing forest. But it had the provision of rights and concession of the benefits to the bonafied use of the communities living within or around forest areas especially the tribals. Their domestic requirements and essential materials were to be made available through conveniently located depots in reasonable price. There was provision to associate the tribal people closely in the protection, generation and development of forests as well as to provide gainful employment to people living in and around forest. Tribal cooperatives, improvement

of the status of the tribal people through forest, undertaking integrated area development programme to meet the needs of the tribal economy in and around the forest areas were specially emphasized. However, after introduction of national forest policy in 1952 some states enacted their own Forest Acts and locally amended at their level them according to the needs.

Furthermore, the National Forest Policy enunciated by the Govt. of India in 1952 emphasized on a functional classification of the forest such as; Protected forests, National forests, Villages forests and free lands. Behind this classification paramount needs of the country, were the need for evolving a system of balanced and complementary land use, the need for checking; Denudation in mountainous areas, erosion on the treeless banks of great rivers and invasion of sea sands, on coastal tracts and shifting sand-dunes in the desert. The need for establishing tree lands for ameliorating physical and climate condition, ensuring supplies of gazing, small wood for agricultural implements etc., sustained supply of timber and other forest produce required for defence, communication and industry, and realization of the maximum annual revenue were most vital. The forest regions are mainly inhabited by the tribals. Hence they are usually affected by the implementation of National Forest Policy, keeping in view interest of their tribesmen; some of the states devised their won forest policy to provide rights and privileges to be enjoyed by the tribals.

The concession and privileges enjoyed in respects of cultivation, gazing of cattle, collection of fuel wood, collection of timber for construction of house, collection of forest produce for crafts, mining and quarrying, hunting, fishing, collection of minor forest produce, shifting cultivation, employment and other services were adopted by some of the states for their respective tribal people.

The then State Government of Orissa permitted gazing of cattle in reserved forests on payment of prescribed fees



and the incidents of grazing was controlled through issue of permits. But practically the forest officials did not allow the tribals residing in the enclaves in the reserve forests.

With regards to the collection of fuel wood in Orissa, the position varied from area to area. In the B Class reserved forests of Angul sub-division cutting of unreserved species for firewood was allowed free of charges to the tenants; in the ex-state area of Athamalik dry fire wood could be collected free; in Boudh sub-division dry fallen fire wood could be collected on payment of royalty fixed for tenants. But the villagers living in forest enclaves were permitted to collect firewood free.

In Keonjhar, the aboriginal tribes and also the landless or poorer class were allowed to remove for the purpose of sale naturally fallen fire wood, bamboos, fibres, leaves and glasses, on payment of 75 paise per annum or one head load a day.

With regard to the collection of minor forest produce in Orissa, the position differs from area to area. In Angul sub-division edible roots, fruits, leaves, creepers and thatch grass were allowed free for bonafide use in A Class reserved forests. In the ex-state of Bonai, the edibles fruits, roots and flowers were allowed free; thatch and Sabai Grass were allowed at half of the scheduled rate. In the ex-state of Gangapur edible roots, fruits, leaves etc. were allowed free to the villagers living close to the forest, provided that they render services in extinguishing fire, cutting boundary and fire lines. In the ex-state area of Khandpara there was no concession to the tenant collection of minor forest produce. The aboriginals were however, allowed edible fruits, roots creepers and leaves free.

Where the tribals are allowed to collect and sell minor forest produces, they were generally required to sell the same to the lessees appointed by the Forest Department. The prices for sale of the products were fixed by the Divisional Forest Officer in consultation with an Advisory Committee. The tribals

and those were interested in the welfare of the tribals invariable complained that the lessees cheat the tribals, both in price and weight.

Clause 23 of the National Forest Policy adopted in 1952 stipulated that, "The damage caused to forests by shifting cultivation in certain areas must be guarded against. To wean the aborigines, who eke out a precarious living form axe-cultivation moving from area to area, away from their age-old and wasteful practice, requires persuasion, not coercion; a missionary, not an authoritarian, approach. Possibilities of regulating shifting cultivation by combining it with forest regeneration (taungya) to the benefit of both should be fully explored. Success in this direction largely depends on enlisting the co-operation of the cultivators and gaining their confidence and in showing consideration to their needs and wished".

In Orissa, shifting cultivation was extensively practiced in undivided in Koraput, Kalahandi, Phulbani, Ganjam and Keonjhar Districts. It was estimated that about 1200 sq. miles area of the State was under shifting cultivation. In Kalahandi, pattas were used to be given in the past for such cultivation. In Keonjhar, the Forest Department was expected to demarcate area, where the Juangs would be allowed to carry on shifting cultivation. In practice however, no such demarcation was made and the Juang carried on their cultivation according to their convenience.

Forest villages were set up in remote and inaccessible forest areas to meet the manpower need for forestry development. In due course they settled there and in some cases those forest villages were converted into revenue villages before 1980. Even thereafter, a number of forest villages have yet to be declared as revenue villages and some of them may not have been recognized either as revenue village or forest village. In March 1984 Ministry of Agriculture advised the State Governments to confer inheritable and inalienable rights on



forest villagers if they were in occupation for more than 20 years and this problem is yet to be taken care of. Keeping the interest of the tribals in view it is under active consideration that forest villages may be converted into revenue villages after de-notifying requisite land as forests.

Minor forest produces provide substantial sustenance to the tribal communities particularly, in very backward regions. There are tribal communities who absolutely depend on seasonally available multifarious minor forest produces for their employment and income. Of course, collection of minor forest produces was primarily for meeting their personal requirements. But in due course, because of the commercial value of some items, tribal people started generating income by selling all these produces. In some areas the forest department started the practice of assigning collection of minor forest produces to traders. Whether it is done by the traders or by the forest department people but the collection charges paid to the tribals were very low and concerned states were also fixing very small royalty. The malpractices continued in the trading of minor forest produces was undoubtedly quite depressing. Hence, trade in some of the minor forest produces was nationalized in some states. It laid to introduce suitable legislation and monopoly rights to purchase the nationalized items. In spite of the new endeavour the situation did not improve substantially even in nationalized commodities. The practice of advance sale of future collection to the contractors with agreement did not yield good result. As per the law the state can purchase the nationalized commodities. Hence, the tribals directly sold it to the department but in most cases, the department purchased from the agents formally or informally which are collected by the traders from the tribals. In order to avoid quality control, storage and financial responsibilities, the department handed over the charges to the agents. In this process the primary objective of eliminating middlemen and providing maximum benefits to the collector could not be

achieved. Simultaneously, contractors, cooperatives and departmental agencies collected minor forest produces from the agents, which are practically collected by the poor local tribals.

Another important factor is fixation of price for minor forest produces which is to be paid to the primary collectors. Policy of manner of payment, place of purchase and wages received as compensation to hard work discouraged the tribal collectors. Hence in some areas the tribals refrained from the collection and allowed the minor forest produces to be wasted in the forest. The collection price and the price paid by the industrial units to use the items did not suit to the policies. Directly or indirectly the practice deprived the tribals to get their due share against their hard labour, hence, their economic growth hindered. Malpractices of officials of the cooperatives discouraged the system and deprived to enjoy the benefit of minor forest produces. The collection of minor forest produce is supposed to be organized as an economic operation taking into account marketing forces. There may be a national reduction in the royalty of the state. But it will be more than fully compensated by many other gains to the state by the fact that the total collection will be countered for.

On one hand Non-Timber Forest Produces are an important source of forest revenue for the Government. On other hand it an important source of livelihood of the tribals and other inhabitant of the forest. The tribals and other forest dwellers are the primary gatherers of Minor Forest Produces. The PESA (Provision of the Panchayat's Extension to Scheduled Areas) Act, 1996 have also given ample scope to the tribals for collection of Minor Forest Produces. Under the policy of Joint Forest Management, the local committees are being closely involved as partners of Forest Department in the management of degraded forests, and the members of the Vana Sanrakshyana Samiti are entitled to share of the usufructs, including the entire NTFP gathered from such a forest area.



Considering all aspects of the matter, Government decided a policy guideline for streamlining the system of collection and disposal of Sixty Eighty Non-Timber Forest Produce item, the list of which may be modified by the State Government from time to time. Gram Panchayat/Gram Sabha in the scheduled areas will have the ownership over MFP produced within its territorial jurisdiction i.e. in respect of the MFP produced in and collected from the Government lands and forest lands within the limits of revenue villages comprising the Gram Panchayat. Under law, ownership of MFP in non-scheduled areas is not vested in Gram Panchayats. Gram Panchayats both in the scheduled and non-scheduled areas will however, have the authority to regulate purchase, procurement (as distinct from collection by primary gatherers) and trading in MFP in accordance with the policy outlined in the succeeding paragraphs.

No Gram Panchayat, whether situated within or outside the scheduled area will have ownership over MFP produced in Reserved Forests, in forest areas under wildlife Sanctuaries and National Parks which are outside the limits of revenue villages. The Gram Panchayats will not therefore have the right to grant lease or license to any individual or agency for collection of Minor Forest Produce from any Reserved Forest or Sanctuary or National Park. Somehow, members of Vana Sanrakshyana Samities, and tribals artisans etc. as part of their customary rights will be free to collect Minor Forest Produce from forest areas excluding sanctuaries and National Parks. When any such MFP collected from forest areas is brought to that a village, i.e., into the territory within a Gram Panchayat, it will come under the Gram Panchayat's powers to regulate procurement and trading. Where Vana Sanrakshyana Samiti has been formed, the Samiti and its members will have priority over the Gram Panchayat in the matter of collection and disposal of Minor Forest Produce of the respective forest area.

Any person desirous of purchasing MFP from primary gatherers or trading in MFP so purchased shall apply for registration to the concerned Gram Panchayat's and the Gram Panchayat may register such dealers or traders for a season from the first day of October to the last day of September of the following year. Dealers and Traders will have to seek fresh registration for the next season. Gram Panchayats shall make all efforts to promote free competition in procurement of MFP by engaging as many as dealers for each item of Minor Forest Produce as reasonably practicable. The Gram Panchayat shall also levy an annual registration free from such dealers or traders at such rate as may be determined by the Gram Panchayat and shall issue a certificate of registration to the registered dealers and traders. The dealers registered by the Gram Panchayats will have to furnish a monthly return to the concerned Range Officer indicating the item of MFP procured, quantity produced and the GP from which procurement was made during the month. No person will be allowed to operate as Dealer/Trader in MFP in any area without being registered as such by the concerned GP.

The collection of MFP by the primary gatherers will be subject to reasonable control to be exercised by the DFO in accordance with the provisions of law and sound silvicultural principles laid down in the Forest working Plan which shall be given publicity in advance in the adjoining GPs.

The Government agencies like Orissa Forest Development Corporation, Tribal Development Cooperative Corporation etc. may also register themselves with one or more Gram Panchayats for procurement and trading in one or more items of Minor Forest Produce.

A Gram Panchayat may cancel the registration of any dealer/trader or may refuse to grant registration for the subsequent seasons if after summary enquiry in course of which the affected party shall be given an opportunity to show cause; it is satisfied that the dealer/trader has produced any MFP from



the primary gatherers at a rate lower than the minimum procurement price fixed for that item of MFP under Para 5 of this resolution for the relevant year.

No lease shall be granted by Government in respect of any Minor Forest Produce nor shall it levy any royalty on these items after commencement of this Resolution. No Forest Department Transit permit will be required thereafter for transport/ movement of any Minor Forest Produce within the State.

The Trade in Kendu leaf will continue to be directly controlled by the State Government as there is well laid down statutory provisions for control of trade in this item. Sal seed which is the one NTFP items notified as a specified forest produce under the Orissa Forest Produce (Control of Trade) Act 1981 will also be dealt with in accordance with the provisions of law by Government keeping the overall interest of the trade, the industries and the gatherers in view.

Certain items, namely Sal leaves, gums and resins of different trees, Khaira and catechu, the barks of different trees and climbers and roots of various species which have medicinal and other used will not be leased out, as the collection of these items on commercial scale has adverse impact on the sustainability of the particular species and the forest. In particular localities, however, based on sound assessment of silvicultural availability and any enforcement of appropriate collection procedure, any of these lease-barred items may be allowed to be collected either directly by field Organization of forest Department or a Government undertaking.

The remaining items of MFP, which may be modified by Government from time to time, will be allowed to be procured and traded by the dealers who have been registered for the purpose under this Resolution by the concerned Divisional Forest Officers. Individuals, Societies, Cooperatives, Government Undertakings and Corporations may be registered

as a dealer for the above purpose, such registration shall ordinarily be granted by the Divisional Forest Officers for a season (From the First day of October to the last day of September of the following Calendar year) to applicants seeking such registration, unless there are validity reasons for refusing registration. The DFOs will endeavour to promote competition among the traders and dealers by registering as many dealers as reasonably practicable for a specified area. For each item, as many dealers as may come forward can be engaged for each. Forest Divisions/ Range, OFDC, TDCC, Cooperative Societies like LAMPs etc. will also be eligible to register themselves with the DFOs and should be encouraged to engage themselves in trading in these items. The Vana Sanrakshyana Samiti, Mahila Samiti, recognized groups of primary gatherers may also get themselves registered for this purpose. The fees to be paid for registration shall be prescribed by Government.

The registered dealers will be required to furnish the names of their authorized agents/nominees and the names of their collections and storage centres to the concerned Divisional Forest Officers, and will also record the daily transactions in prescribed formats. The dealers will have to enter into an agreement with the concerned DFOs under which the dealers will be responsible for achieving a minimum target of procurement to be fixed by the Divisional Officer, of a particular item during a collection season. If the collection method of any particular item in any particulars area is considered to be harmful or injurious to the forest, the DFO may impose temporary ban on such collection.

The registered dealers will have to pay royalty to the local Forest Range Officer at the rate fixed for the quantity of produce collected. The rate of royalty shall ordinarily not be less than 10 per cent of the minimum procurement price for the particular item but this rate may be varied by Government from time to time, suomuto or on the proposals submitted by the Divisional Forest Officers.



The registered dealers will be required to take transit permits from competent Forest Officers for movement/transport of the produce out of the collection centres after setting the royalty dues etc.

The Divisional Forest Officer may cancel the registration or refuse registration of any dealer/ trader it after summary enquiry in course of which the affected party shall be given an opportunity to show cause it is found that the dealer has procured any forest produce from the primary gatherers at a price less than the minimum procurement price fixed for the relevant year under para-5 of this Resolution or has failed to achieve the minimum target of procurement, or has failed to file the prescribed returns or has failed to settle the royalty dues in time.

For all NTFP items including MFP, the Committee appointed by Government in SC & ST Development Department will fix the minimum procurement price each collection season of part thereof. These procurement prices shall be announced every year ordinarily during the month of September and will be given wide publicity as decided by Government.

As a matter of fact, ideally any act relating to forest should be framed aiming at the greater interest of the tribals because they are the original inhabitant of forest. Their life, culture and rich heritage are definitely more important than forest species, forest wealth and forest revenues. However, Government of India seriously realized that it is proper to give due reorganization to the traditional rights of the forest dweller's hence introduced a new forest Act in 2006, the details about which is given below.

**The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** is an Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such

forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

The recognized rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.

The forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

It has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

**Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers. (1) For the purpose of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:**

- (a) Rights to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;



- (b) Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
- (c) Right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) Other community rights or uses or entitlements such as fish and other products or water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) Rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) Rights in or over dispute lands under any nomenclature in any State where claims are disputed;
- (g) Rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) Rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages.
- (i) Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) Rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted

as rights of tribals under any traditional or customary law of the concerned tribes of any State;

- (k) Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) Any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) Right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13<sup>th</sup> day of December, 2005.

**(2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees no exceeding seventy-five trees per hectare, namely:**

- (a) Schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;



- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill up-gradation or vocational training centres;
- (l) roads; and
- (m) community centres.

Provided that such diversion of forest land shall be allowed only if, (i) the forest land to be diverted for the purpose mentioned in this sub-section is less than one hectare in each case; and (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

**Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. – (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in –**

- (a) the forest dwelling Scheduled Tribes in States or areas in State where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
  - (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.
- (2) The forest rights recognized under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any

manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions are satisfied, namely:

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life Protection Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternative package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfills the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package: Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted



by the State Government or the Central Government or any other entity for other uses.

- (3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13<sup>th</sup> day of December, 2005.
- (4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.
- (5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.
- (6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares.
- (7) The forest rights shall be conferred free of all encumbrances and procedural requirements,

including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

- (8) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

**Duties of holders of forest rights – the holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to –**

- (a) protect wild life, forest and biodiversity;
- (b) ensure that adjoining catchments area, water sources and other ecological sensitive areas are adequately protected;
- (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural land natural heritage;
- (d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.



**Authorities to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers and procedure thereof. –**

- (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level.
- (2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under this subsection.
- (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition; Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha: Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.
- (4) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

- (5) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition: Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee: Provided further that no such petiton shall be dispose of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.
- (6) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.
- (7) The decision of the District Level Committee on the record of forest rights shall be final and binding.
- (8) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.
- (9) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled



Tribe members and at least one shall be a woman, as may be prescribed.

- (10) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

Offences by members or officers of authorities and Committees under this Act. – Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made there under concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees: Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Cognizance of offences. – No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

Members of authorities, etc. are to be public servants. – Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers

conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**Protection of action taken in good faith** – (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

**Nodal agency.** – **The Ministry of the Central Government dealing with Tribal Affairs or any Officer or authority authorized by the Central Government behalf shall be the nodal agency for the implementation of the provisions of this Act.**

**Power of Central Government to issue directions.** – In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

**Act not in derogation of any other law** – Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in



derogation of the provisions of any other law for the time being in force.

Power to make rules – (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: -

(a) Procedural details for implementation of the procedure specified in section 6;

(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;

(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(e) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for

a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

The Act has aimed at forest development and development of the forest dwellers by maintaining equilibrium between the two. The implications of philosophy and objectives of the Act are to be observed in long run. Forest officials and Grama Sabha have to ensure economic ends of the inhabitants accompanied by achievement of the economic welfare and well being of the forest dwellers as they are very simple, illiterate and hardly accustomed to and unaware of the nature of the Act and its enforcement. It also depends on practical translation of the Act at the time of its execution because forest dwellers are yet to be empowered to fight against false entries, fabricated false evidence, false charges, false statements etc.

It should be in mind of the Act executants that forest dwellers have lived in forest for centuries and certain human rights follow such historical associations. This Act should not turn the original forest dwellers into second class and helpless citizens in long run. In a democratic society the initiative, intellect, resources, organizations and labour have to come from the forest dwellers that have been living in forest for centuries. Sociological, psychological and human consideration should be given top priority than emphasizing upon botanical, zoological and mineral values of the forest.



The natural and human rights of the original occupants of forest must be respected in broader perspective.

With my more than 30 year's experience of working with tribals in different capacity, have a feeling that two essentials elements are lacking in implementation of forest laws these are; (i) Proper understanding of the stakeholders about laws meant for them and their participation, (ii) Proper understanding of the forest personnels' about customary practices, value system of the dwellers and get insight into the historical background of the tribals with reference to forest dwellers and their relation with forest.

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## FOREST AND TRIBAL LIVELIHOOD

Shri Sanjoy Kumar Pattnaik\*

A famous Bollywood song goes thus '*Jungle mein more nacha kisne dekha*'. In English, it would mean "who has seen the peacock dancing inside the forest?" Beginning with a line from a hindi film song might seem to be a rather frivolous way to deal with a serious and important subject like tribal forest rights. But read between the lines and it would bring to the fore two very crucial aspects about forest management in India. First, very few have a clue as to what exactly is happening inside the forest. Secondly, it reinforces a nationally shared notion that no one other than forest authorities has anything to do with forests. Stretched further, it would also mean that forest officials are only entitled to see the peacock dancing or hear a tiger growling. Though a little exaggerated, the song offers a lot to reflect about the age-old perception people have about forest management in India.

A little peep into the ecological history of India would clearly reveal that forest, as a natural resource was never meant to be used for the local forest dwellers. It was to be used as a means to perpetuate to be their subjugation instead. Forestry in colonial India was all about commercial exploitation and revenue and thus recognized no rights and concessions for forest dwellers, who were mostly Tribals. There existed no legislative framework that could make forests available for meeting local livelihood needs and the colonial powers made no effort to hide their intention, i.e., forestry for commerce,

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\* A province located in the eastern parts of India.



especially timber. Forestry science was introduced as a codified, printed and formal curriculum by them to continue political domination that implied non-recognition as well as opposition to the largely oral indigenous forest management traditions. This marked the beginning of a forest governance system that was alien, induced and most importantly excluded forest dependent communities in the name of scientific forestry, public interest, national development, conservation and industrial growth. The national governments in the post-colonial phase inherited the colonial worldview that not only aimed at the use of eastern forests to boost western industrial development, but also harped on the non-existing incompatibility between conservation and livelihoods.<sup>2</sup>

### **Forest Rights in British India**

The British established a mode of forest governance that imposed restrictions on local forest dwelling communities through a definition of forests as national property meant to be used to achieve the colonial objectives, which tried to acquire control of forests for commerce and national development at the cost of local forest based livelihoods. Though Forest Administration in British India, as is known, stressed on national development, it was really meant to be used by the whole body of taxpayers.<sup>3</sup> Thus primary focus of forest governance was commerce through limiting of the rights and privileges of local communities. Such regulation of rights was reflected in the classification of forests during colonial times. As national property, forests were classified as conservation forests, commercial forests, minor forests and pasture lands. The first two categories - as the names would suggest - were out of bounds for the local forest dependent communities. Minor forests were managed by Panchayats with a view to reducing the contact between subordinate forest officials and villagers. Pastureland, mostly grassland, was more for animals than human beings.

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<sup>2</sup> The basic objective of this discussion is to bring into debate some apprehensions on the true nature of forest rights in India by putting in perspective the policy developments both during colonial and post colonial India, focusing at length on the two 'widely accepted' revolutionary resource rights legislations of the last one decade. It endeavours to analyse the strengths of the consultative processes and assesses the extent to which they translate the needs and aspirations of the people they intend to benefit before getting the legislative endorsement as law.

<sup>3</sup> The Old Forest Policy, Dr. Voelcker's Report on Improvement of Indian Agriculture, pp. 155-162 of F.D Code, 6<sup>th</sup> Edn, Circular No. 22-F, October 1894.



During medieval India, the ownership of the forests was with the local chiefs with access rights to the local communities. Towards the beginning of the nineteenth century, the British wanted to undertake unhindered exploitation of timber, which required that the government assert its ownership over forests and do away with the traditional systems of community forest management that existed in most parts of the country. This had nothing to do with conservation; it was a ploy to keep under their direct control over trees, timber and forest routes. Teak was identified as a rich substitute to oak, already getting depleted in England, to build the Royal Navy and Railways.<sup>4</sup> With this avowed objective, the East India Company acquired royalty rights over teak in 1807. This meant prohibition of unauthorized teak felling and the Conservator becoming the sanctioning authority for teak felling and selling, more of an assumed power than lawfully given. By 1846, such sanctioning authority over teak extended to all forests and forest produces and the Company's sovereignty extended to the total forestland by 1860. As an aftermath of the Sepoy Mutiny in 1857, during which forests and the forest dwelling communities provided the rebels with a safe hiding place, the Company administration prohibited and withdrew all access rights and privileges to fuel, fodder and other local uses. In order to legitimize authority with legal and administrative backing, the Imperial Forest Department was brought into being in 1864 to consolidate state control on forests and forestry was made a scientific operation making it inaccessible to the forest dwellers.

In order to legitimize it with law, a series of legal instruments were passed in the form of forest acts from 1865 to 1878 to 1927. These Acts empowered the government to declare its intention to notify any area as a reserved or protected forest, following which a "Forest Settlement Officer" supposedly would enquire into claims of rights (to land, forest

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<sup>4</sup> Oak was used for shipbuilding in England. During the 19<sup>th</sup> century, Oak supply for shipbuilding went down heavily forcing the colonial government to look for alternatives in its colonies in the east. Burmese and Indian teak were identified as good substitutes and the East India Company was thus mandated to make laws accordingly.



produce, pasture, etc.). The colonial forest administration camouflaged timber extraction as conservation thus curtailing livelihood rights, through classification of forests and prohibition of customary use rights. There were no settlement of rights and no space for meeting local needs. On the contrary, valuable trees were reserved and elaborate provisions were made for punitive actions. The 1927 Act remains India's central forest legislation and with minor modifications is still operational in independent India.<sup>5</sup> Thus started a purposive state intervention in forests and measures relating to scientific conservancy was promoted for legitimacy.

### **Forest Rights in Independent India**

With independence, local forest dependents expected to get their rights back. But far from improving, the rights situation actually worsened. Though the policy makers changed, the policies remained more or less the same. During the process of accession of the Princely States after independence, the activity of consolidation of government forests continued. Though the States proclaimed the lands of ex-princely states and zamindari lands as Reserve Forests, no effective steps for settlement of rights were taken. This inevitably sowed the seeds of the future forestland conflicts between the Tribals, non-Tribals and the state.

Forest governance in post-colonial India could be broken up into three phases. The first phase, which lasted from independence till the early 70s, was the phase of commercial exploitation of forests for industrial development as well as for creating farmland for the large peasantry. The second, which lasted till the commencement of the 1988 National Forest Policy, was a phase of conservation with increased State control. During this phase, forest conservation was made a directive principle, a fundamental duty in the Constitution and brought to the Concurrent List for greater control of the national

<sup>5</sup> As per the Act, the Government can constitute any forest land or wasteland which is the property of the Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. This Act enabled the colonial Government to declare more and more land as reserve forests, without ascertaining the rights of the tribals and other forest dwellers.

government. It was also the time when powerful legislative instruments like the Wildlife Protection Act and the Forest Conservation Act were put in place. This phase, like the previous one, had no space for forest dwellers and Tribals in the protection and management of local forests. With the coming of the National Forest Policy in 1988 began the third phase, which not only made forest a local resource but also made the participation of local forest protecting communities mandatory in regeneration of degraded forests. But did it help?

### **Conservation continuity in Independent India**

Development of legal instruments in the second phase was a response to forest and wildlife depletion in the first phase. These instruments were extremely conservationist in nature, did not differentiate between local and external use, stressed on excessive state control in the form of Eminent Domain, restricted or did not recognize existing local use rights. The assumption was, forest has been destroyed by the forest dwellers/Tribals and it needed to be protected/conserved from them, though in reality mindless exploitation of the forest and its wildlife were the handiwork of the rich and the influential. Though the Forest Conservation Act restricted forest diversion for non-forest use, by prescribing prior permission and a high conversion rate, it in effect, made such diversion possible for them. It is interesting to note that the law being what it was, for the rich with their money and influence forestland diversion was easier whereas the poor forest dwelling Tribals were termed as 'encroachers' and a direction for their eviction was issued by the MoEF through the May 2002 circular. This incapacitation of forest dwelling Tribals aggravated with the coming up of the Protected Area Network in the country, which meant more and more inviolable areas with no or negligible rights over forests and forestland by the Tribals and enabled the state to evict local forest dwellers without settling their bonafide rights to residence. It was unfortunate that even the recent amendment to the Wildlife Protection Act of 2002 has



made no reference to PESA and has withdrawn continuance of right even after the final notification of a protected area. There was a constant and consistent process initiated to make the conservation legislations like WLPA and FCA more powerful than rights providing legislations like the PESA, though the latter was an amendment to the Constitution.

One of the residual features of the colonial State that survived even in the post-independence period was its obsession with techno-scientific expertise and utter mistrust and complete rejection of people's power and knowledge as important inputs for achieving national development goals. Development policy making in India, unfortunately, positioned itself on the astounding premise that people did not know anything. The prevailing social and political culture, the legal rational bureaucracy and - most dangerously - the nation as a whole were made to believe in and sustain such an exclusionary development design skillfully promoted by the State institutions. Curiously, almost all enabling and rights conferring provisions were in the form of policies that had no legal sanction while the restrictive ones were in the form of Acts, which had legal backing. Besides, regulatory authorities and the rights guaranteeing institutions mostly focused on commercial exploitation and conservation whereas the rights of local forest dependent communities still remained an area of utter indifference.

### **Evolution and Implications Pro-Tribal Forest Legislations in India**

Since the primary intention of colonial laws was to take over lands and deny the rights of communities, the "settlement" process initiated during the late 19<sup>th</sup> and early 20<sup>th</sup> century was hardly effective. Surveys were often incomplete or not done (82.9% of Madhya Pradesh's forest blocks have not been surveyed till date, while in Orissa more than 40% of state forests are "deemed" reserved forests where no settlement of rights

took place). Where the claims process did occur, the rights of socially weaker communities – particularly Tribals – were rarely recorded. The problem became worse particularly after Independence, when the lands declared “forests” by the Princely States, the Zamindars and the private owners were transferred to the Forest Department through blanket notifications. In short, what government records call “forests” often included large areas of land that were not and never were forest at all. Moreover, those areas that were in fact forest included the traditional homelands of communities. Since such process of consolidation of Government forests did not settle existing claims on land, all those, mostly Tribals, who lived in these forests, were subsequently declared as “encroachers”, as they did not have recognized rights and claims on their ancestral homelands.

### **Panchayats Extension to Schedule Areas Act, 1996**

During the 90s, the *Eminent Domain* of the State was challenged by activists and human rights movements. Rights of the Tribals over local resources were considered sacrosanct and non-negotiable and a move was initiated to secure Constitutional recognition for these rights. The sustained campaign led first to the 73rd Amendment of the Constitution to give recognition to decentralized governance in rural areas and then the constitution of Bhuria Committee to look at tribal rights over resources through extension of the provisions of this Amendment to the Schedule V areas. Based on the recommendations of the Committee, Parliament passed a separate legislation in 1996 as an annexure to the 73rd Amendment specifying special provisions for Panchayats in Schedule V areas. Known as Panchayats Extension to Schedule Areas (PESA), 1996, it decentralized existing approaches to forest governance by bringing the Gram Sabha center stage and recognizing the traditional rights of Tribals over ‘community resources’ - meaning land, water and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well



as a basis for future law making concerning the Tribals. As per the Central law, the States promulgated their own laws supposedly giving rights to Tribals over local resources.

It is almost a decade since PESA came into effect, but the obstacles in enforcing its provisions have remained largely unaddressed. Its avowed objective of power to the people still remains to take shape. The States are struggling to come out with definitive procedures to define rights over forests and minor forest produces. Meanwhile, some States like Maharashtra, Gujarat, and Orissa, in an effort to perpetuate State control over forest resources, tried to dilute the provisions of PESA though they had no legal jurisdiction to do so.<sup>6</sup> The Government of Orissa, for example, 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. This clearly implied that Tribals can have rights over forests and minor forest produces, only if existing laws allowed it. Instead of changing state laws inconsistent with PESA, the Government of Orissa changed the provisions of the Act, thus negating the rights conferred on the community by the Constitution. The original objective of the Central Act was that State Governments should change their laws as per the Central legislation. But the Government of Orissa, on the contrary, tampered with the Central legislation to suit its own convenience.

The Central Act talked about providing ownership rights over minor forest produces to Gram Sabha. The MoEF constituted an expert committee to define ownership, which recommended that 'ownership means revenue from sale of usufructory rights, i.e., right to net revenue after retaining the administrative expenses of the department, and not right to

<sup>6</sup> Saxena, N.C., *"Politics of Tribal Development: Analysis and Suggestions,"* p.7.

control'. The case of Andhra Pradesh is even more interesting. It gave ownership rights to the VSS in respect of all NTFPs for which Girijan Cooperative Corporation (GCC) did not hold the monopoly rights. Similarly, there is no clarity on the issue of 'community resource'. The States have their own interpretations and legislations. While Orissa and Andhra Pradesh are silent about what constitutes community resource, Madhya Pradesh has defined it as land, water and forest. This implies that the powers given by PESA to exercise rights over community resources are almost non-existent in many states.

Though the Central Act leaves no room for doubt that reserve forests should be considered 'community resources' under the purview of PESA, the official assumption is that reserve forests are out of the PESA domain. For instance, the NTFP Policy of 2000 in Orissa restricts the Panchayats control over minor forest produces in reserve forests. It says that the GPs shall not have any control over MFPs collected from the reserve forests whereas the PESA, in its spirit, sought to extend ownership of forests to any forest located in the vicinity of the village that the people have been traditionally accessing. The policy makers knew it very well that it would be foolish to create such a distinction since it was almost impossible to differentiate between produces collected from reserve forests and those from others. Nevertheless, they went ahead with putting in place the proviso that reserve forests cannot come under the purview of PESA since the relevant laws lay down that no rights can exist in the reserve forest area.

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

The Hon'ble Supreme Court of India in an important case had held that the Tribals have a definite right over the forests and any sort of forest diversion or eviction should have their informed consent. Following suit, in an affidavit to the Apex Court, in June 2004, the Government of India made a significant



admission by holding that 'historical injustice' has been done to the tribal forest dwellers of the country, which needs to be immediately addressed by recognizing their traditional rights over forests and forestland. What made this admission particularly crucial is its acceptance that colonial perspective on forest management has failed and alienated a large chunk of the forest dwellers, especially Tribals from forests and forest based livelihood options. Besides, it could not have come in a better time than just months after the eviction of about 1.68 lakh families from over 1.5 lakh hectares effected by May 2002 Government order of eviction of forest encroachers. This led Government of India to introduce the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 in the Parliament on 13<sup>th</sup> December 2005. This legislation is now widely accepted and revered as a major step towards achieving social justice and a milestone in the tribal empowerment process.

Pressure mounted on the Government by tribal bodies and supportive progressive forces to introduce structural changes in favour of the forest dependent people resulting in constitution of the Joint Parliamentary Committee (JPC) to give a fresh look at the Bill and recommend measures to meet their demands. Considering the fact that Tribals were served with eviction notices in May 2002 for being 'encroacher' as they could not produce residential evidence in forests, before 25<sup>th</sup> October 1980 as per the FCA 1980, JPC recommended that the cut-off date for the settlement of rights be extended to 13<sup>th</sup> December 2005, the date on which the Bill was first tabled in the Parliament. It further recommended inclusion of non-Scheduled Tribe "traditional forest dwellers" living in the forest for three generations within its ambit. The recommendations also included the identification of the 'critical wildlife habitat' by an independent and participatory scientific process, and relocation of the residents, if necessary, through mutually acceptable terms. JPC also recognized multiple land use for shifting cultivators and removed the land ceiling of 2.5 hectares for land rights. Besides, considering the heavy dependence of tribals and other forest dwellers on NTFP, and the associated exploitation of these

hapless creatures by the middlemen, it urged for ensuring minimum support price (MSP) for minor forest produces. Furthermore, JPC made Gram Sabha the final authority in the process of rights settlement. In matters relating to forestland diversion for non-forest use, consent of the Gram Sabha was made mandatory.<sup>7</sup> Representation of the panchayatiraj institutions at all levels was also strongly recommended, the Gram Sabha being a core unit, in all matters relating to selection and identification in the rights settlement process. In recommending changes to the Bill, JPC made PESA a reference point by bringing Gram Sabha center stage.

Like most other progressive legislations, the JPC recommendations were hailed by one and all in the field as one of the most revolutionary contributions to tribal law making process in India, with the exception of the forest bureaucracy and the conservationists who regarded it as the 'death knell' on forests of the country. But the State probably had different motives and ideas. After these recommendations were introduced in the legislature and came out as law, the offspring had very little resemblance of its parentage. It raised serious doubts about its ability to undo the injustices it was supposed to address in the first place. The Bill which was hurriedly passed in December 2006 completely obliterated the pre-eminent position that was given to the Gram Sabha. PESA which formed the very basis of the JPC recommendations was ignored and quietly forgotten. The result was predominance of the limiting provisions over the enabling ones. The unhindered power and strength of the forest bureaucracy, conservationists, and the mining and industrial lobby were to large extent reinstated and reinforced.

Now the big question is, can the Act in its present form deliver what it was supposed to? There are more reasons to

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<sup>7</sup> This provision was significant in the context of a great push by the MoEF to open up forests to the Corporate sector through the new Environment Impact Assessment Notification of September 2006. It is the MoEF which estimated that the number of development projects since 1980 to be 11, 282. A conservative estimate of the tribal displacement could be to the tune of 8.53 million, which is about 72 per cent of all displaced during this time. Besides, as per MoEF, about 5.75 lakh hectares of forest land, including dense forests, has been handed over for non-forestry purposes for mining, etc. (Archana Prasad, *Survival at Stake, Frontline*, 12 January 2007, pp 4-10).



be pessimistic about it than otherwise. The apprehension starts with the narrowing down of the definition of 'forest dwellers', which says, 'people who reside in the forest and excluded all such who live in 'close proximity to forests', implying thereby that while rights were secured for people residing in recorded forests, it excluded a large majority of Tribals staying in unrecorded forest villages.<sup>8</sup> A quick look at the Orissa situation reveals an interesting but dangerous scenario. Orissa has the largest number of forest fringe villages in the country, i.e., about 29,302, which is about 60% of the total number of villages of the state. The total forest area of these forest fringe villages is about 1.8 mha, which is less than 33% of the total forest area of the state, i.e., about 5.8 mha. Since the condition 'in close proximity to the forest' was withdrawn in the final Act, the number of Tribals or other forest dwellers who would be eligible for claiming land rights within a forest would be very small. The group of ministers who gave the final shape to the Act have been smart enough to exclude a huge majority of Tribals by putting a condition 'in the forest', which would eventually mean less than 5% of the deserving Tribals getting the benefits of the Act. Though the draft rules for the Act prepared in June 2007 include people of 'in and around' forest as forest dwellers eligible to get the benefits of the Act, there are doubts if it would remain in tact, till the draft rules take a final shape.

Unfortunately the preeminence given to the Gram Sabha in matters of forest governance by JPC has been substantially reduced. It is now neither the final authority in settlement of rights nor its consent is mandatory in diversion of forestland for non-forest purposes. The authority has gone over to the sub-divisional committee. Representation of forest dwelling tribes in the Sub-Divisional Level Committee has been excluded from the bill providing opportunity to the departmental officers

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<sup>8</sup> As per the MoEF, there are about 3000 recorded forests in the country, meaning that tribals and other forest dwellers outside these forests would be debarred from being the beneficiaries of the Act, (Archana Prasad, *Survival at Stake*, Frontline, 12 January 2007, pp 4-10)

to exercise their authority on the decisions. The Gram Sabha has no role when it comes to either demarcation of a protected area or in deciding the critical wildlife habitat. The Government reserves the right to decide the area, whether there would be eviction or not and Gram Sabha would only give its informed consent on the resettlement package. The Gram Sabha does not have the right to disagree. Besides, the role of Gram Sabha for determining the rights has been limited only to initiate the process of determining the rights.

The earlier 'core areas' within the protected areas will now have a new name, i.e., the 'critical wildlife habitats'. Earlier, core areas were management concepts without any legal backing whereas the critical wildlife habitats are now a legal concept. Earlier, most of these core areas in the sanctuaries used to get converted into a national park to make it out of bound for the local communities, in order to avoid continuance of rights in a sanctuary. A closer look would reveal that critical wildlife habitat is nothing but a new name for core areas with legal sanctity. Like the core areas, the determination of critical wildlife habitat being a scientific process will also be decided by the Forest Department. The Act seems to be in no way different from the Wildlife Protection Act, when it says that 'forest rights recognized under the FR Act within the Critical Wildlife Habitat of a protected area can be modified and resettled if affects the purpose of creating inviolate areas for the wildlife. Moreover, nobody will be evicted or removed from forest land under one's occupation unless recognition and verification process is over, implying that once the people can be evicted once the verification process is over.

Furthermore, issues relating to activities causing 'irreversible damage to forests' or decision on the possibility of coexistence, and the decision to relocate is now vested with the Forest Department.<sup>9</sup> Like the amended Wildlife Protection Act of 2002, the above process makes no mention of the specific rights of Gram Sabhas in a scheduled area.

<sup>9</sup> It is not to be misunderstood that the members of the Expert Committee that will work on all issues relating to the protected areas will be nominated by the Government including the local representations.



Moreover, the State is now not bound by law to prescribe minimum support price for minor forest produces, which JPC had suggested. This would mean leaving the poor tribal primary collectors at the mercy of the middlemen once again. A strong lobby was working against this from the time the recommendation was put for debate in the public domain. Since the provisions of this Act will not prevail over the other Acts, the limitations imposed by the WL Act in terms of collection of NTFP from the protected areas would still prevail. Besides, since this Act will be in addition and not in derogation of other laws made from time to time, there is hardly any possibility of having any significant improvement in the existing tribal rights situation.

In this context, it would be interesting to note the response of some very senior forest officials across the country on the rights given to Gram Sabha over NTFP. The Act defines minor forest produces (MFP) as all NTFP of plant origin including bamboo, Tendu leaves, etc. The rule says the rights would be given over all MFP regardless of whether they are nationalized or previously restricted or prohibited and all items provided in State Acts and rules, etc. The response that most sections of the forest bureaucracy is preparing now is, first of all in States where the procurement and trade is going on smoothly and effectively, this rule should not be applied, which might destabilize the market and have negative impact on collection price. Secondly, it is almost impossible to create a new structure that would be efficient too.

It might be a little harsh if it is termed as just one more Act with all the previous restrictions on tribal rights remaining in tact. But it will certainly be an exaggeration if termed as revolutionary and a panacea for all forest rights related issues in India. History is replete with examples of progressive Bills and Committee Reports turning out to look pretty ordinary after they have undergone through the legislative process. The two most crucial rather frustrating aspects of the process of the

making of the Forest Rights Act is, complete non- acceptance of PESA as a basis for law making and relegating it (FR Act) to being just another legislation at par with the WLPA, FCA etc. This will imply that the restrictions provided in these legislations will continue and override the FR Act, whenever required. Therefore, the objective for which this Act was visualized and conceived still remains unfulfilled and will remain so until the FR Act is appropriately recast.

### **Controlling Through Definition and Classification**

In the last couple of decades, debates around forest rights have focused basically on two areas: definition and classification of forests and the nature and extent of departmental control over different types of forests. Though classification is indicative of designated control, there are still some areas where community control is more than visible strictly from a conservation and sustainable dependence point of view. Though a large tract of land was recorded as 'unclassified' forests in government records both during the colonial and the post-independence periods, the ownership was unclear. Since most of these forests were home to a large number of tribals, the land was usurped by the State without settling their rights over them.<sup>10</sup> After independence, supported by improper survey and settlement, large tracts of land have been declared as Reserve Forests, meaning no rights either existed there or would exist in future. This meant that though rights existed and people were residing in and around forests, their land was grabbed by the Forest Department without settling their rights, leading to their eviction. They have been termed as encroachers in their own land.

There are thousands of cases of local inhabitants claiming that they were in occupation of notified forestlands prior to initiation of forest settlements under the Indian Forest Act. There are a number of cases of pattas/leases/grants said to

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<sup>10</sup> Hereinafter *Forests, Down to Earth*, Centre for Science and Environment, New Delhi, June 15, 2007, p.38.



be issued under proper authority but have now become contentious issues between different departments, particularly the Forest Department and the Revenue Department. The problem is compounded by the fact that in many cases, there is no clear demarcation of forest lands. In fact, most of the disputes and claims relating to use of and access to forests have fallen flat because even the Forest Department is also not able to clearly identify a Government forest.

Besides, frequent changes in the definition and classification of forests have not helped in determining and settling forest rights. Different laws, policies and orders defined and classified forests differently. Read between the lines, all the definitions and classifications have specific control regimes attached to them. For example, forest was first defined in the Indian Forest Act 1865 as 'land covered with trees, brushwood and jungle', since its purpose was timber extraction. In 1996 the Hon'ble Supreme Court, as part of the interim judgment on the Godavarman case, defined forests as an extensive area covered by trees and bushes with no agriculture.

As recently as in 2007, MoEF has proposed a definition that says forest is "an area under Government control notified or recorded as forest under any Act, for conservation and management of ecological and biological resources". If the proposed definition becomes operative, then it is expected to put private forestlands out of the purview of forest laws and may come in conflict with the 1996 verdict of the Hon'ble Supreme Court. Through this definition, an effort is being made to address the limitations on afforestation on forestland and also restrictions on cutting and transport of trees mandated by the Indian Forest Act 1927 and the Forest Conservation Act 1980. This definition is bound to have enormous implications for the corporate actors, especially those active in the plantation sector. With private forestlands taken out of the purview of forest laws, large tracts of revenue land would now have forest species on them, timber from which can be safely

harvested without attracting any forest law. It is now becoming increasingly clear why MoEF, in the recent past, has exhibited such missionary zeal in considering proposals to place large areas of forestland in the hands of industries for afforestation.

With this definition, diversion of a patch of land legally defined, as forest can be possible. What an irony! The MoEF, which so faithfully carried out the Supreme Court order as regards not giving land to the Tribals and even termed them as 'encroachers' in their own homes instead, is now ready – even eager – to take on the same mighty institution in favour of the Corporate houses. The same MoEF never bothered when the Supreme Court banned collection of minor forest produces from within the protected areas. It even went a step ahead and amended the Wildlife Protection Act as per the Supreme Court order. One more example of what money and influence can do in this country and what the voiceless and powerless are destined to endure!

### **Global and external at the cost of local**

A quick look into the current management approaches reveals some startling trends with regard to community rights over forest resources. On one hand, the limitations of the so-called progressive legal framework are getting slowly exposed. On the other, there are equally disturbing developments like changing definition of forests, forest diversion becoming easier with the pre-eminent role of the mining lobby <sup>11</sup>, large scale plantation projects taken up to create carbon sinks in natural forests with no or negligible local access rights, gradual withdrawal of the State machinery from the forest based livelihood sector, especially NTFP, and the missionary zeal exhibited to renew the industrial-commercial approach to forest management further marginalizing local users and putting a big question mark on their continued dependence on forests.

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<sup>11</sup> Very recently, May 2007 to be precise, a forest policy review process by the State identified that since Orissa is rich in minerals with 70% of the country's coal production coming from the forest areas of Orissa, for harvesting minerals, forests have to be sacrificed, and compensatory afforestation undertaken.



As discussed in the previous sections, the colonial legislations had no pretensions whatsoever to protect and promote local access rights. Therefore, forest management was expected to adopt a welfare approach in independent India. But somehow, it did not turn out to be so. On the contrary, when it came to transferring rights to the local forest dependent communities, laws, Acts and Supreme Court orders were brought in the way to obstruct such transfer. Even when no such legal and judicial hurdles were there, bureaucratic apathy, inactivity and reluctance combined to obstruct their effective implementation. Needless to say that in both the situations, the forest dwellers, mostly Tribals, continued to remain at the receiving end. But the process of the marginalization of forest dwellers does not end with Acts and policies alone, Government sponsored programmes and projects faithfully reflect the dominant worldview of creating more space for the private players, implying penury for the perennially marginalized 'public', i.e., the forest dwelling Tribals. In order to substantiate the current argument, it may be relevant to focus on some such programmes and approaches.

The strict conservation orientation of the plantation projects implemented to create carbon sinks <sup>12</sup> in the protected forests, to a large extent, has limited local access rights. The only right that is recognized is the right over NTFP. The approach of such projects is to remove potential threats of deforestation, and manage forest areas so as to minimize human impact. Interestingly, carbon payments would be supposedly used to develop local income sources, outside protected forests. In other words, it is an endeavour to shift the livelihood focus from forests to other non-farm sources, and conserve forests exclusively for carbon sinks so as to create carbon credits for payments that States could use in infrastructure development.

Closely observed, these developments would reveal a very interesting, though disturbing, trend. Now, with the above-mentioned

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<sup>12</sup> Global forest governance discourse has not only expanded the definition of forests, but also has caused a shift from its usual mercantile logic that puts a premium on timber - its quality and volume. Concerns about climate change, disruption of global carbon cycle, carbon stocks and emission and rates of sequestration have, besides adding a new dimension to forest management, also transformed forests from a local to a global resource. A new form of economic activity has spawned in the era of global warming, i.e., buying and selling of environmental services (read carbon trade). Carbon sinks are created through conserving existing forests and taking up tree planting projects to remove greenhouse gases.

developments taking place, the major landmass of the country is expected to come under the purview of plantation projects. On one hand, the State Forest Departments will use bilateral donor funding for plantation in the forestlands; on the other, the private sector, armed with a new definition of forest, would go in for large scale plantation activities with deceptive use of jargons like 'public private partnership'. In the process, they would occupy and usurp a major portion of the revenue land, especially from the cultivable wasteland category. As discussed, the locals will have no access rights in the plantation forests not to speak of any such rights in the private plantation areas. The States, as well as the Corporates, are expected to earn a fortune in the process through selling carbon credits as well as through timber trade.

If a major chunk of the revenue land of the said category is leased out to the Corporates for taking up plantation projects, it is definitely going to have a serious repercussion on the process of land distribution to the landless under different Government schemes. Because of the huge revenue gain for the State, revenue lands, which could have otherwise been settled in favour of the landless, would now go to the private sector. Besides, with large-scale industrialization, Government also has to find land, especially of the non-forest category, for the industries to take up Compensatory Afforestation<sup>13</sup>, where locals will have no access rights. Besides, in matters of forestland being given to the industries for compensatory afforestation, no rights assessment is done before such forestland is transferred. It is assumed that all rights are settled in a forestland. There are instances in Keonjhar district in Orissa, India, where shifting cultivation areas have been given for compensatory afforestation. The forest dependent communities are losers both ways. On one hand, their livelihood options

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<sup>13</sup> The local forest dwellers have neither any say in matters of forest diversion nor the compensation that is received under Net Present Value (NPV) for such diversion of forestland for non forest purposes nor in its utilization. The irony is, the local communities protect the forest, somebody else cuts it and somebody else receives the compensation. As per the MoEF order of April 2004, money received towards NPV shall be used for natural regeneration, forest management, protection, infrastructure development, wildlife protection and management, etc. There is no mention of creating or compensating livelihoods for the local communities, which the forest diversion has deprived them of. The fund distribution mechanism is based on the erroneous assumption that the losses due to forest diversion are more national than local.



are closed within the protected forests; on the other, they have no entitlement over cultivable wastelands either. Such processes are expected to create a situation where the landless would remain so for God knows how many years, decades, and centuries.

As if all this was not enough, the hapless tribal now also has to contend with the gradual closing of NTFP option - his last remaining for some cash income. Under the misleading pretext of the falling international prices and procurement of certain commonly traded NTFPs, state governments are now increasingly trying to wriggle out of their responsibility to manage, monitor and promote collection and trade of NTFPs. Rather than acknowledge the fact that the drop in procurement and prices of NTFPs is a result of their own policies and inaction and find ways to reverse the trend, they have chosen to place primary gatherers completely at the mercy of ruthless market forces. Their decision to curtail their involvement in the NTFP sector is based purely on calculations of profit and loss and is a complete abrogation of their welfare obligations. The state of Orissa is a case in point.

In the continued harangue over national objectives and global needs, the question of the livelihood security of the forest dwellers has been given quiet burial-as if they belong to another planet. As we have seen, forests in India have always been valued for revenue profit, conservation and as a genetic reservoir. They have never really been perceived or managed as livelihood recourse. The fact that sustainable development of forests is possible with the harmonious blending of local, national & global needs has never been acknowledged in the country.

In what can be called the mother of all ironies, the Government, through its policies and actions, first pushes the forest-dwellers into utter penury and then starts poverty alleviation programmes for them!

However, there is no place for cynicism in development, it is said. It is the hope of change that keeps many like us going. Therefore, all that matters and remains crucial is the silver lining behind the dark cloud. The Forest Rights Act beyond any iota of doubt stands out as landmark legislation in the history of tribal law making in India, which will no doubt create the necessary and enabling condition for settling

forestland claims of the real losers. The pessimisms and apprehensions raised elsewhere in this article may not last long if some of these concluding thoughts are considered on priority basis.

- There is a dire need to recast/amend Forest Rights Act as per the PESA provisions.
- PESA should be made the basis for tribal law making and to have overriding powers.
- PESA provisions should be reviewed to ensure actual implementation and the State laws to be changed as per PESA.
- The existing claims on forestlands to be settled through proper procedure before declaration of Government forests and now onwards Gram Sabha to have a say in such declaration.
- Forest area outside reserve forests should be clearly delineated on ground to know the extent of forest rights.
- Forest usage pattern to be assessed to develop written rights and concessions to establish forest rights in case of dereservation.

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## **THE FOREST RIGHTS ACT: An Instrument to Ensure Forest Dwellers Rights**

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*The scheduled Tribes (Recognition of Forest Rights) Bill was drafted by Ministry for Scheduled Tribes and was tabled in Lok Sabha in December 2005. The bill aimed at providing rights to the Tribals over the forest resources. The said bill was referred to the Joint Parliamentary Committee for recommendations. The JPC presented the recommendations in the Parliament on 23<sup>rd</sup> May 2006. The bill was passed in the Lok Sabha and Rajya Sabha on 15<sup>th</sup> December 2006 and 18<sup>th</sup> December 2006 respectively. Finally the Act received the assent of the President of India, on 29<sup>th</sup> December 2006, and was notified in Gazette of India on 2<sup>nd</sup> January 2007. The Act came to force on 31<sup>st</sup> December 2007. Government of India has finally notified "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007" on 1 January 2008.*

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The passage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is a major victory for the Tribals and forest dwellers and a big step in the struggle to reverse the historical injustice done to them. It was a landmark legislation meant to address both forest rights and occupancy rights of people, who had been using forestlands for generations without any formal recognition. People have been living in the forests for generations but they are always coined as 'encroachers' by



the government as they do not have a legal right over the land they are residing or cultivating. This Act actually does not distribute lands to the people by it recognizes the rights of forest dwellers over land that they are already residing in and cultivating.

We will be able to understand the Act better if we explore the history and analyze how and why we say 'historical injustice'. In the nineteenth century, the British wanted unrestricted exploitation of timber; so there was a growing need for the government to assert its ownership over forests. As a result, in the name of conservation, Indian Forest Acts 1876 & 1927 were enacted whose primary intention was to take over the lands and deny the rights of the communities. These Acts empowered the government to notify any area as a reserved or protected forest, following which a "Forest Settlement Officer" supposedly would enquire into claims of rights (to land, forest produce, pasture, etc.). The survey and settlements were sometimes incomplete in many states and the places where settlements occurred, the rights of the Tribals were rarely recognized. After independence, the problem aggravated when there was transfer of forestland declared by Princely states, zamindars etc. to the forest department through various notifications. So the communities who in fact resided in the forests were actually termed as encroachers over time.

The government's thrust on conservation again raised its head with the Forest Conservation Act 1980 but it has not lead to the protection of forest. Since 1980, it is estimated that 40,000 ha of land has been diverted annually for non-forestry purposes (Gupta 2006). Mining companies, industries, paper mills and other business houses have benefited in the process. Since the FCA 1980 has come to force, lakhs of people have become encroachers in different parts of the state.

In September 18, 1990, The Ministry of Environment and Forests (MoEF) issued six sets of "Guidelines"<sup>1</sup> for resolving

the disputes related to forestland between tribal people and the State. Ignoring these guidelines, MoEF issued a directive on 3<sup>rd</sup> May 2002 and instructed state governments "to evict the ineligible encroachers and all post-1980 encroachers from forest lands in a time bound manner". This directive has led to massive eviction drive of lakhs of Tribals and other forest dependent communities all over the country.

Two other cases are worth mentioning here. One is the Godavarman Case (Writ Petition 202 of 1995, T.N. Godavarman Thirumulpad vs. Union of India). This PIL has caused an enormous amount of "collateral damage" for tribal communities in the form of orders that effectively restrict (or worse still negate) their rights on forest land. The other is an Interlocutory Application (IA) 703 filed by Amicus Curiae, Mr. Harish Salve (23<sup>rd</sup> November 2001) on regularization of the rights of the Tribals on the forestlands. The case restrained Central Government from regularization of encroachments.

In February 2004, MoEF issued two new circulars: one was "Regularization of the rights of the Tribals on the forest lands". In this circular, the date of regularization of the encroachment was extended to 31<sup>st</sup> December 1993. The other circular was titled 'Stepping up of process for conversion of forest villagers into revenue villages'. These were stayed by the Supreme Court. In an affidavit filed in the court to get the stay vacated, MoEF finally admitted that during the consolidation of forests, "the rural people, especially Tribals who have been

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Circular No. 13-1/90-FP of Government of India, Ministry of Environment & Forests, Department of Environment, Forests & Wildlife date 18.9.90 addressed to the Secretaries of Forest Departments of all States/ Union Territories. The six circulars under this were:

- 1) FP (1) Review of encroachments on forest land
- 2) FP (2) Review of disputed claims over forest land, arising out of forest settlement
- 3) FP (3) Disputes regarding pattas/ leases/ grants involving forest land
- 4) FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry works
- 5) FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations
- 6) FP (6) Payment of compensation for loss of life and property due to predation/ depredation by wi



living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these Tribals have become encroachers in the eyes of law" and that "it should be understood clearly that the lands occupied by the Tribals in forest areas do not have any forest vegetation".

In 2005, The Ministry of Tribal Affaris was mandated to formulate a comprehensive legislation to redress the historical injustice done to tribal community and for clear assertion of their legal rights on land and The Scheduled Tribe Recognition of Forest Rights Bill 2005 was tabled in the Parliament in 2005. The bill spelt that the cut-off date for recognizing the rights as 25<sup>th</sup> October 1980, the ceiling as 2.5 hectares for each settler family and applicable only to Tribals. The said bill faced stiff opposition from 2 quarters. First, from the environmentalist/wildlife group who advocated for management of forest, wildlife and other bio-diversity with complete exclusion of tribal people, local communities or forest dwellers. Second, from MoEF who held that implementation of the bill will lead to depletion in the country's forest cover. Both the groups termed that 'legalizing encroachments' would definitely lead to the destruction of India's forest and wildlife. This was despite the fact that the forest map and the tribal map in our country coincide with each other.

The bill was referred to the Joint Parliamentary Committee to look into the issue. The committee consisting of twenty members presented the recommendations in the Parliament on 23<sup>rd</sup> May 2006. The bill and the subsequent recommendation recognized the symbiotic relationship between the forest dwellers and forest. JPC made three vital recommendations. First, the bill should include all forest dwellers groups, and not just schedule tribes. JPC gave rights to the non-schedule tribes who have been living in the forest for three generations or more or were settled there by the government even if involuntarily. Second, the cut-off date for deciding who can be



vested with rights was pushed to 13<sup>th</sup> December 2005, instead of 25<sup>th</sup> October 1980. Third, the ceiling of 2.5 hectare of land to be given to each settler family has to be done away with (no ceiling limit). It also recommended other changes like the final authority determining the land and forest rights will be Gram Sabha, while only dissatisfied ones can take up their issues to sub-divisional and district level committees for redressal. JPC report included provisions to allow infrastructure projects such as schools, hospitals and roads etc. It also vested the right to the community for making regulation to prevent damage to wildlife, forest or biodiversity. Moreover, the penal provisions for the forest dwellers were removed. Overall, the recommendations were at least a step towards loosening the grip of forest departments, Corporates and state governments over the forest dwellers.

Though the Act is a diluted version of the recommended draft proposed by the Joint Parliamentary Committee (JPC), it still has various positive features like individual and community rights to tenure, right to access, right to ownership over forests, right to in situ rehabilitation, including alternative land in cases of illegal eviction or displacement. The Act recognizes the rights of the individuals and communities over homestead land, cultivable land, grazing land and on non-timber forest produce. It also speaks about the duties like protection and regeneration of forests and biodiversity. The diversion of land will also not take place without the consent of the Gram Sabha. So the FRA is a significant step forward to address the historical injustice. But there are places where the act has fell short in advancing the cause of the Tribals and traditional forest dwellers.

**Some of the Salient Features of FRA, 2006**

- Cut off date recognition and claiming forestland rights under the Act will be 13<sup>th</sup> December 2005.
- The act recognizes the rights of both Tribals and traditional forest dwellers provided that the traditional



forest dwellers have to prove their residence on the claimed land for more than 3 generations. For the purpose of this clause, "generation" means a period comprising of twenty-five years.

- The ceiling of land ownership will be 4 hectares per family.
- "MFP" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like. The Act recognizes the right of ownership, access to collect; use and dispose of minor forest produce, which has been traditionally collected within or outside village boundaries.
- Eligibility to get rights under the Act is confined to those who "primarily reside in forests" and who depend on forests and forest land for a bonafide livelihood needs.
- No member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forestland under his occupation till the recognition and verification procedure is complete.
- FRA has provisions of treating forestland as community forest resource and allows the communities in conserving the forest resource.
- The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling STs and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in

such manner for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

In India, several tribal communities are not given the status of STs despite their similar histories and livelihood practices. For e.g. Paharia of Sunabeda area in Nuapada district of Orissa has not been given the status of tribal whereas Paharia in Chhatisgarh are given the tribal status. This may lead to tensions in different parts of the country when certain communities will be able to file claims under the clause of Tribals. Tensions may also arise within villages between Tribals and traditional forest dwellers when one can claim rights within the cut off date December 2005 while the traditional forest dweller within the same area has to prove his residence of 75 years. It may be difficult to prove residence for 3 generations especially if they have been displaced again and again. All the time frames specified in the Act and the Rules are those that apply to the gram Sabha. There are no time frames for the higher level committees, making it easy to deny rights by simply delaying it.

The Act provides the rights to the communities to protect, regenerate or conserve or manage any community forest resource but it does not provide them any powers to do so. It will be impossible to monitor the four hectare claim of the communities practicing shifting cultivation. It will be very difficult for the pastoral communities (mostly non-Tribals) living in forest areas to claim their rights, as they will be asked to submit 75 years of proof of residence. Moreover, they are continuously on the move so to settle their rights/claim of 4 hectare in one Gram Sabha will be difficult. The Act is not very clear regarding the eligibility of claiming rights; it says "those residing in and who depend on forest and forest lands for bonafide livelihood needs". There are forest dwellers who do not strictly reside inside the forests so the definition is



ambiguous and may be misinterpreted while implementation and a large number of beneficiaries may be excluded as a result of this restrictive definition. Moreover, the rights of the nomadic and pastoral tribes may be curtailed, as they are dependent of forest resources but not necessarily residing in them.

After an inexplicable delay of more than twelve months the Government of India finally notified "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007" on 1<sup>st</sup> January 2008. This delay caused a lot of hue and cry among the Tribals and the forest dwellers and a large number of forced evictions have taken place. There are instances of forest department constructing boundaries in their area, 7 villages were demolished by Forest Department in Burhanpur District, Madhya Pradesh, forced plantations were done, houses were demolished, trenches were dug etc. There are also some cases of fresh encroachments in some states and it may be the result of the provision for regularization before December 2005 but it can be detected through satellite imagery.

The Forest Rights Act has been come into force from January 2008 but the real challenge is its implementation in a just and democratic manner. The Prime Minister has instructed the State governments to ensure wider circulation of the provisions of the Act as well as to form the committees at State, District, Block and Panchayat level. In most of the areas, the State governments have issued detailed instructions and for time bound implementation of the Act. Committees are being constituted for processing the claims for the Tribals and forest dwelling communities. Gram Sabhas have been convened and Forest Rights Committee (FRC) has been formed in most of the States except in Tamilnadu, West Bengal where the state government has showed no efforts to initiate the process. In Orissa, Gram Sabhas are being convened at the 'Palli Sabha' (revenue village) level for the formation of FRC.

The Act needs several safeguards for effective implementation. There needs to be constant vigil on bureaucracy, Forest Department, industrial and mining corporations, mafias involved in forest based ventures who have a history of illegally grabbing forest lands. The Gram Sabhas have been given huge responsibilities in initiating the process of claims etc. so they need to be empowered. To properly perform their responsibilities within the time frame provided by the Rules the FRCs and Gram Sabha require extensive support in terms of familiarizing them with the provisions dealing with the claims, resolving conflicts, documentation etc. The State government and civil society organizations have a greater role to play in capacitating the Gram Sabhas in carrying out its responsibilities. A uniform approach to implementation of the Act will not work. Its implementation should be site-specific taking into account the cultural, social, ecological diversity in the country. The Tribals in most parts of India are illiterate at least in legal matters and they also do not speak and understand the state language so sensitive and competent officials/CSOs should listen to them and interpret their claims.

The Act is one of the legal tools to fight against the historical injustice done to the forest dwelling populations and recognize their rights over forestland. An honest implementation of the Act will contribute towards better conservation, livelihood security and secure rights of the Tribals and traditional forest-dwellers in India, which has been long overdue. Instead of finding impediments in implementing the Act or being unnecessarily fearful of it, we must welcome the fact that the Tribals are organizing themselves for political, economic, social and cultural enhancement. The Act is a step in the right direction to end various forms of discrimination and oppression, in whatever form or wherever they occur.



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## **RECOGNISING THE RIGHTS OF THE FOREST COMMUNITIES**

**Sweta Mishra**

Vasundhara

### **INTRODUCTION**

The ongoing peoples' struggles in Niyamgiri and Kashipur in Orissa epitomize the real faultlines of India. On the one hand, is the neo-liberal discourse backed by State power, which is on an overdrive in the adivasi heartland leading to exclusion and alienation of adivasis and other forest dwelling communities from their fundamental rights and entitlements over productive and livelihood resources - land, water and forests. On the other, is the rich and long history of peoples' led adivasi struggles for dignity and basic rights. The neo-liberal framework has only accentuated the fault - line. The post - colonial Indian developmental paradigm, inspite of a politically progressive constitution, has also systematically marginalized and excluded the adivasis and other forest dwelling communities. The impact of this systematic exclusion has been high levels of adivasi displacement from their own land and livelihood, and appallingly low levels of Human Development Indicators.

Historically, the access and ownership rights of natural resources, particularly, land, water and forest, were governed by the principles of community rights over Common Property Resources. The advent of colonial rule led to pitched battle between adivasis and the colonial State; as the colonial State started taking over the control and rights over these resources through the barrel of a gun. These natural resources provided



the raw materials for the industrialization led development model of profiteering of the imperial raj. Therefore, elaborate legislations and laws were drafted to ensure the ownership of the State over these resources for uninterrupted access; leading to alienation of adivasis from their cultural and historical rights over land, water and forests. Post-colonial India, inspite of the special provisions for adivasis in the constitution, continued with the same model of development.

As a result, the alienation and exclusion of adivasis from their historical rights over their natural resources continued in the name of 'national interest', which took the form of large dams and mega industrial and mining projects. Post nineties, this alienation has accelerated and the objective has changed from the so called 'national interest' to market led economic development, a euphemism for privatization of natural resources.

In this context, the 'Forests Rights Act' passed by the Parliament of India in December 2006 is a decisive political shift. For the first time, the Indian State admits and recognizes the 'historic injustice' done to the adivasis. However, it is important to emphasize that the Forest Rights Act is not a deed of State's benevolence but the culmination of several democratic struggles spanning over decades and across the country. It is an inspirational story of a successful peoples' campaign, through sustained democratic and political action, which was able to translate the local struggles of landless adivasis and forest dwellers into an Act of the Parliament.

### **Forest Rights in India**

The history of forest dwelling communities in India, who are mostly adivasis, is rife with exploitation that has undermined their very survival and dignity, and can be traced to precolonial times. Adivasis in many regions of the country live in enclaves, a process which began when the dominant clans and communities began to invade the fertile plains and the adivasis

or 'aboriginal' people of India got driven further and further away, into the hilly regions and forest areas.

### ***The Colonial Period – Indian Forest Act, 1927***

In colonised India, these communities and their livelihoods were threatened yet again, as the colonisers saw the extensive forest areas as a major opportunity for revenue and timber. In the 1800s, the British imperial government started 'settlement and survey' of lands, including forests, with the creation of the Forest Department. The main objective was supplying timber for railways and ship building. The law stated that at the time a 'forest' is declared, a single official (the Forest Settlement Officer) is to enquire into and 'settle' the land and forest rights that people had in that area, a feat that was impossible to achieve across the length and breadth of the country. The Indian Forest Act (IFA) 1927 was the mechanism under which this process was carried out.

### ***The Post Colonial Period - Continuation of the Indian Forest Act***

Post independence, the same law continued governing forest areas. In fact the IFA was extended even to Scheduled Areas (which were dominated by Scheduled Tribes) under the fifth schedule of the Constitution, as well as to the princely states. The process of land acquisition begun under the British continued after independence and between 1951 and 1988 the colonial-era IFA was used to bring an area of 26 million hectares under the regime of the Forest Department.

The combination of unsettled rights and absolute power in the hands of the State created a sense of insecurity among forest dwelling communities, who were subjected to harassment and assaults by the State because they were 'illegal occupants'.

### ***The Conservation Laws***

Wildlife Protection Act 1972 and Forest Conservation Act 1980

The situation only worsened with the Wildlife Protection Act,



1972, and then the Forest Conservation Act, 1980, which were hailed as legislations that would achieve forest and wildlife habitat conservation in India. Unfortunately, the communities whose stake in conservation was almost invisible till then (and who depended most on these resources and thus had been protecting them for years) suddenly became visible, but as exploiters of, and encroachers in, the forests. Under the provisions of the Wildlife Protection Act, 1972, large forest areas were brought under the protected area network of national parks and Wildlife Sanctuaries that were to be human-free, wilderness zones. Many thousands of communities were displaced from these 'conservation zones'.

While the Wildlife Protection Act, 1972 produced the concept of 'human free wilderness zones', the Forest Conservation Act 1980 further restricted the right to use the forests for 'non-forestry purposes'. It was as a part of this legislation that the procedure of 'forest clearance' was outlined. Private as well as government parties wishing to divert forest land for any large or small development project had to seek permission to do so. While this did slow down the pace of diversion of forest land for environmentally destructive projects, it also curtailed access to forests for non-timber forest produce, fuel and fodder by local communities and, more importantly, it halted the regularisation of existing 'forest lands' that were already under cultivation.

### **Social Forestry and Joint Forest Management**

The National Commission on Agriculture, Government of India, first used the term 'social forestry' in 1976. Social forestry was introduced as a 'scheme' under which the Forest Department sought to raise plantations of quick growing species on all available private and community lands outside forest areas to ensure environmental protection. However, the scheme failed to take into account the fact that communities dependent on forests are generally the landless and the most marginalised.

By assisting only landowners the scheme further alienated the marginalised sections of rural communities.

The increasing international pressure and national level struggles demanding rights over forests, led to the emergence of the concept of Joint Forest Management around the mid-1980s. The primary, but not overtly stated, objective of the programme was to attain maximum tree cover. For the first time, it was proposed to include the communities in planning and implementation of the project. In some states where people's rights over forest use were totally extinguished through earlier state actions, this provided an opportunity to use and manage forests. In states where indigenous systems of forest use and management had survived, either due to government apathy or due to a history of struggle (as in Orissa and Uttarakhand), this programme proved to be detrimental to community interests. Locally, they lost out on the rights they enjoyed solely over legally recognised categories of 'village forests' like *gramya jangal* in Orissa and *van panchayats* in Uttarakhand. At the national level, the scheme put an increasing pressure of debt due to loans from the World Bank. However limited in scope, even if some areas managed to develop their resources under these schemes, the communities were unable to sustain the development due to lack of long-term perspective of the department.

### ***The Report of the SC-ST Commission***

The real breakthrough occurred with the 29th report (1987-89) of the Scheduled Castes- Scheduled Tribes Commission by B. D. Sharma, then Commissioner of Scheduled Castes and Scheduled Tribes. He broke the silence on the issue of the adivasi-forest areas, bringing to the government's notice the different disputes related to forest land between adivasi people and the State and proposing a framework for resolution of the disputes. Based on these recommendations, the Ministry of



Environment & Forests (MoEF) issued a set of six circulars on September 18, 1990. Besides making a clear distinction between 'encroachers' and those with disputed claims, the 1990 orders also recommended that the claims could be verified in consultation with gram sabhas. In essence, the 1990 guidelines provided that any State orders for regularisation of pre-1980 claims could be implemented. Not much was done by the MoEF to ensure the implementation of these circulars, which more or less went into oblivion, as admitted by the MoEF itself in its affidavit filed in the Supreme Court.

### ***The Godhavarman case and MoEF orders for eviction***

The position of the MoEF became glaringly obvious in May 2002 when it directed all states to evict 'encroachers' from forest lands. Based on this order, the forest department brutally carried out eviction drives and according to MoEF figures, 1.52 lakh hectares of encroachments from forest lands were removed over a span of 18 months. This order was preceded by, and supposedly based on, a series of Supreme Court orders in the famous Godhavarman case. In 1995, the Godhavarman public interest litigation (PIL) was filed, to stop commercial interests from encroaching upon forests. In 1998, the Supreme Court created the Centrally Empowered Committee to look into what came to be known as the 'forest case', in which a series of interventions were filed, including one on illegal occupants. In response, the Supreme Court ordered a halt to regularisation of encroachments. The MoEF interpreted this as an order to evict encroachers, without considering its failure to implement its own 1990 orders.

Adivasi land alienation, migration, and ecological deprivation greatly accelerated in the era of economic reforms and growing liberalisation and privatisation. It is important to note that the biggest threat that adivasis and other forest dwelling communities have faced in the last two decades is displacement from their habitats as corporate interests take over land and

forest resources for industries and mining projects. It is in this context that the adivasi rights movements have seen an upsurge, with access to and ownership of land and forest resources becoming central to their discourse. And it is in this period that the **Panchayats Extension to Scheduled Areas Act (PESA)** was evolved and introduced to give greater control to gram sabhas in adivasi dominated areas.

### **Panchayats Extension to Scheduled Areas Act (PESA)**

PESA was an attempt to decolonise the government and Panchayati Raj. It talked of real participatory democracy for the first time. It threatened the overall politico-socio-economic framework that was in place, especially in adivasi areas. While today PESA is largely spoken of as a legislation that has not been implemented, organisations that advocated and fought for it see the Act as having played an important role in providing the space for intensifying the conflict in adivasi areas and creating the political environment for demanding territorial rights, apart from the right to rule.

However, not PESA nor any of the existing Government Resolutions (GRs) or circulars were strong enough to ensure the rights of the forest dwelling communities in the face of a Supreme Court that was beginning to take positions that were strongly anti-people and in favour of 'forest conservation', viewing all occupants of forest lands as responsible for the destruction of forests. The need for a legislation that also challenged the colonial framework of forest land governance put in place by the British became more apparent at the time that forced evictions were being carried out.

### **Recognition of Historical Injustice**

The Scheduled Tribes and Other Traditional Forest Dwellers Rights (Recognition of Forest Rights) Act, passed by the Parliament of India in December 2006 is a decisive political shift. For the first time, the Indian State admits and recognizes



had already made an impact on the ground when it came into operation on January 1, 2008. There were reports that the State Forest Departments were rushing to carry out evictions from allegedly encroached lands before its provisions to stay all evictions came into force. Reports from Andhra Pradesh, Gujarat and other parts of India spoke of fresh clearing of forests at the instance of political parties, with the promise that these would be regularised under the Act. More quietly, communities and civil society organisations at some sites began preparations for implementing the Act in such a way that both forest protection and livelihood security could be enhanced.

Now that the Act has been operationalised (with the notification of Rules), the question is: will it achieve what it sets out to do, and what will be the larger impact?

The preambular text of the Act clearly lays out the context for its operative provisions. It is meant to undo historical injustices meted out to forest-dwelling populations in not recognizing their rights to land and resources. But it also stresses that the rights of forest-dwelling communities include responsibility for the sustainable use and conservation of biodiversity. Will its implementation help achieve this rather difficult balance between livelihood security and ecological conservation, which has eluded most conservation or development programmes in India so far?

The Forest Rights Act is a product of this history. Indeed, it is doubtful if it would ever have come into being if the people behind the Indian Forest Act, the FCA, and the Wildlife Protection Act integrated a livelihoods perspective into their vision. Had the interests and traditions of forest-dwellers been taken on board in the past few decades, the country would have had several million more supporters of conservation.

The debate on the Forest Rights Act has seen some incredible assertions about what it is going to result in. On the one side

are a handful of conservationists (and prominent journalists) claiming that the Act will end up destroying all of India's forests and be the final nail in the coffin for the tiger. On the other side are human rights advocates who wax eloquent about how the Act will revolutionise Adivasi existence and save India's forests from being destroyed by the industry-bureaucracy nexus. In the middle are a range of observers, cautiously supporting or questioning the Act, recognising that its impact is going to be extremely mixed.

### **Critical Wildlife habitat**

A significant provision in the Forest Rights Act is relating to "critical wildlife habitats" (CWH). Such areas can be notified within protected areas (national parks and sanctuaries) as 'inviolable areas' and can then be secured from all damaging human activity; indeed, for the first time in any Indian legislation, these would be sites that cannot be diverted for any other purpose whatsoever. Even the Wildlife Act does not have such a strong provision. However, establishing CWHs has its own complications. The location and extent of CWH areas needs to be determined based on scientific criteria. The Act also specifies that in such areas, relocation of people can take place only if it is established that co-existence between human communities and wildlife is not possible, and if the communities give their informed consent. For the first time in the conservation history of India, forcible displacement of people has been made illegal.

CWHs also provide space to review the way in which we do conservation. The model of fortified Protected Areas (PAs) under the Wildlife Protection Act, 1972 is/has been challenged by the dispossessed communities. The manner in which PAs have been set up, ignoring the rights and needs of several million people dependent on their resources, has only created mass hostility and anguish. The tremendous traditional knowledge and practices, which were often strongly



conservation-oriented, have also been ignored. The CWH process can lead to more site-specific and species-based approaches, from those that require total freedom from human use to those that actually thrive with human influence. The CWH provision in the Act provides space for more participatory approaches and provides more power and responsibilities to local to conserve their surrounds.

The biggest challenge at the moment is the implementation of the provisions of CWH. Ministry of Environment And Forests (MoEF) has issued a set of guidelines on 1st October 2007 for the determination and declaration of Critical Wildlife Habitats (CWH) and Critical Tiger Habitats (CTH). These guidelines are leading to haphazard process in many states especially as they specify very tight timelines. Whether these declarations (mostly relating to tiger reserves) have been issued after following due process is debatable. The provisions of CWH superimposed with the guidelines issued by the MoEF have created confusion on the ground and the communities are in a constant threat of mass displacement [**See Box below for the response of the Orissa Protected Area Network members on the declaration of Similipal and Satkosia as Critical tiger habitats**]. On the other hand the conservationist groups consider it a potential ally to protect the remaining forest and are of the view that all the sanctuaries and national parks should be devoid of human presence if the forests and the biodiversity have to be conserved.

**The myth among most of the conservationist group is that by allowing people to stay in national parks and sanctuaries, the Act will make it impossible to protect wildlife - especially tigers.**

But the truth is that Recognising rights and deciding whether people should stay in an area are two entirely different things. Just as any of us can be resettled at any time to make way for a highway, dam or other project, so too can people be resettled

out of national parks and sanctuaries even after their rights have been recognised. In fact, the Act specifically provides a detailed procedure by which this should be done (section 4(2)). In the past, this kind of resettlement has been done in a highly unscientific, corrupt and coercive manner. Many environmentalists, including the Tiger Task Force, have sharply criticised these practices, since they alienate local people, lead to violent conflict and often result in people secretly returning because they have no choice if they want to survive.

Hence, in a joint statement to the Joint Parliamentary Committee on the Forest Rights Act, several conservationists said resettlement should only happen: "through a site-specific open process, with involvement of ... multi-disciplinary experts, [which] should take place through democratic mechanism including local community representatives. ... [Otherwise there will be] legal battles, physical resistance and enhanced conflict. This will seriously harm both conservation and people's rights."

### **SIMILIPAL AND SATKOSIA DECLARED AS STATE'S TIGER RESERVE**

**PRESS NOTE BY ORISSA PROTECTED AREA NETWORK  
10th Jan 2008**

On 1st Jan 2008 the Forest Rights Act was notified and ironically just a day before, the State Govt. in a hush hush declared Similipal and Satkosia as State's two Tiger Reserves. Similipal, State's first tiger reserve as per the notification of Govt. of Orissa dated 31st December 2007 is located in Mayurbhanj district and covering a total area of 2750 sq kms, with 1194 sq kms as the core area or critical tiger habitat.

Satkosia is State's 2nd Tiger Reserve as per the notification of the State dated December 31st 2007, the reserve consist Satkosia and



Baisipalli Wildlife Sanctuaries covering districts of Nayagarh, Angul, Cuttack and Boudh. According to the notification, the total area of the tiger reserve is 963 sq km while the core area is within 532 sq km.

The Wildlife (Protection) Amendment Act, 2006 provides for constituting of the National Tiger Conservation Authority under Chap IV B, Sec 38 L, responsible for implementation of Project Tiger Plan to protect endangered tigers. The Act mentions that the State shall on recommendation of the Tiger Conservation Authority notify an area as Tiger Reserve and a provision has been made for the State Governments to prepare a Tiger Conservation Plan, which while ensuring the protection and conservation of tigers has safeguards for ensuring the agricultural, livelihood, developmental and other interests of the people living inside a forest or in and around a tiger reserve.

While the Protection and Conservation of the National Animal is of utmost importance and is the need of the hour, at the same time the rights of the Scheduled Tribes and the Forest Dwellers are equally important and is a matter of concern. While the Scheduled Tribes and Other Traditional Forest Dwellers much waited for the notification of the Forest Rights Act which speaks of the historic injustice and ensures recognition of the Forest Rights, their dreams were shattered with the dawn of 1st Jan 2008. The declaration of Tiger Reserves leaves with little or no scope of the rights of the forest dwellers getting recognized and settled. **The declaration of Tiger Reserve is a welcome step but the process by which the Tiger reserve was declared and notified is objectionable said the convener of the Orissa Protected Area Network.**

The Press release of the PMO office on 31st December 2007 mentions that the core or critical tiger habitat as required under section 38 V of the Wildlife (Protection) Act, 1972 have been identified and notified by the States and out of the 17 states with Tiger Reserves, 11 states have already notified the core tiger habitats and Orissa and Jharkhand are yet to finalize the notification. **Interestingly on 31st December itself Orissa came out with**

**the final notification of Similipal and Satkosia as the two Tiger Reserves of the State.**

Sec 38 V (5) of the Wildlife Amendment Act, 2006 mentions that process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and other forest dwellers needs to be completed first and no rights of the forest dwellers shall be resettled or infringed for the purpose of creating inviolate areas for tiger conservation. Further the informed consent of the Gram Sabha concerned is to be obtained in case of resettlement.

Satkosia Wildlife Sanctuary (not yet finally notified) declared on 19th May 1976, has 94 villages (both surveyed and unsurveyed) with 7 villages in the core area. The 7 core village also includes 3 forest villages. Similarly Similipal Wildlife Sanctuary and National Park is also not finally notified and has 4 villages in its core area and 65 villages in its buffer area.

Both the Wildlife Sanctuaries could not be finally notified since the rights of the villages within the Sanctuary are not yet determined and settled. According to the RTI information dt. 24.07.2007 the final settlement report was not yet completed due to the inaccessibility of the area and lack of supporting staff. **The pertinent question now is how within a period of five months the entire process of recognition and determination of rights was completed. Further the Forest Rights Act which brought a ray of hope for the Scheduled Tribes and Other Traditional Forest Dwellers living in forestland as it mentions about the recognition of the customary/traditional rights was intentionally ignored and bypassed. The declaration of the area as Tiger Reserve has raised many unanswered queries among the locals and has left many eyebrows raised.**

On the basis of this joint statement, the Committee recommended a site specific, participatory and scientific procedure for relocation that has ben incorporated in section

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**Orissa Protected Area Network** is a network of People's Organization, Civil Society Organizations, PRI members, CBOs and Environmentalists which is striving for conservation of wildlife habitat and areas through participation of local communities especially those residing in and around the Protected Area network of the state.



4(2) of the Act. The Wild Life (Protection) Act has been amended on the same lines with regard to tiger reserves.

These laws now say that resettlement will only happen if:

1. People's rights have been recognised (without this, people cannot demand proper rehabilitation);
2. It is shown that continued community presence will lead to irreversible damage to wildlife;
3. The community agrees to the resettlement package being offered;
4. Full facilities are provided at the resettlement site.

This is in keeping with international standards, such as those promoted by the IUCN -the world's largest conservation organisation.

The Act does not in any way remove protection from forests. The existing laws will continue to apply, as section 13 of the Act clearly states. Indeed, the Act makes conservation stronger by giving a power to communities to protect forests as well. The Dongaria Kondhs (Primitive Tribal Group) in Lanjigarh, Orissa have been fighting tooth and nail to protect the sacred Niyamgiri hills, their habitat, from the clutches of Mining Corporation. Similarly there are more than 10,000 forest protecting groups spreading all over Orissa, who have been protecting and conserving around two million hectares of forest ranging from a few years to several generations old. By recognising the rights of the communities and granting them the rights and power to protect the forest. The Act makes it possible for the communities themselves to stop the destruction of forests. If implemented properly, the Act provides immense scope and historic opportunity of integrating conservation and the livelihood rights of the people (tribals and other traditional forest dwellers).

#### **References :**

1. [www.fra.org.in](http://www.fra.org.in)
2. Asher Mansi, Agarwal Nidhi, Recognising Historic injustice, Campaign for Forest Rights Act, 2006
3. Kothari Ashish, A long and winding path
4. Truths and Falsehood about Forest Rights Act, NCSD

**ANNEXURE****The Gazette of India  
EXTRAORDINARY  
PART II – Section I****PUBLISHED BY AUTHORITY**

New Delhi, Tuesday, December, 1996/Pausa3, 1918 (Saka)

The following Act of Parliament received the assent of the President on the 24<sup>th</sup> December, 1996 and hereby published for general information:

**THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE  
SCHEDULED AREAS) ACT, 1996**

No. 40 OF 1996

(24<sup>th</sup> 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:

Title: 1. This Act may be called the Provisions of the Panchayat (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.

3. The provisions 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.

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 Incosistent 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 shall:
  - (i) approve 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 utilization 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 specially 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.

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modification made by this Act, any provision or 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 repeated 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 the State.

**K. L. Mohanpuria**  
**Secy. to the Govt. of India.**

रजिस्ट्री सं. डी. एल. - (एन)04/0007/2006-08

REGISTERED NO. DL - (N)04/0007/2006-08



# भारत का राजपत्र

## The Gazette of India

असाधारण

EXTRAORDINARY

भाग II - खण्ड - I

PART II - Section I

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

*New Delhi, the 2nd January, 2007/Pausa 12, 1928 (Saka)*

The following Act of Parliament received the assent of the President on the 29th December, 2006, and is hereby published for general information:-

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST  
DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006



रजिस्ट्री सं. डी. एन. - (एन)04/0007/2006-08

REGISTERED NO. DL - (N)04/0007/2006-08



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MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 2nd January, 2007/Pausa 12, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 29th December, 2006, and is hereby published for general information:-

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006

No. 2 of 2007

(29<sup>th</sup> December, 2006)

An Act to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognized rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use,

conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

BE it enacted by Parliament in the Fifty-seven Year of the Republic of India as follows:-

## **CHAPTER I**

### **PRELIMINARY**

1. (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
  - (2) It extends to the whole of India except the State of Jammu and Kashmir.
  - (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires, -



- (a) "Community forest resource" means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access;
- (b) "Critical wildlife habitat" means such areas of National Parks and Sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government in the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Tribal Affairs shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;
- (c) "Forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bonafide livelihood needs and includes the Scheduled Tribe pastoralist communities;
- (d) "forest land" means land of any description falling within any forest area and includes unclassified forests, undermarked forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;

- (e) "forest rights" means the forest rights referred to in section 3;
- (f) "forest villages" means the settlements which have been established inside the forests by the forest department or any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of *taungya* settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;
- (g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women;
- (h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other dwelling Scheduled Tribes;
- (i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;
- (j) "nodal agency" means the nodal agency specified in section 11;
- (k) "notification" means a notification published in the Official Gazette;



- (l) "prescribed" means prescribed by rules made under this Act;
- (m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the constitution;
- (n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;
- (o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for *bonafide* livelihood needs.  
Explanation - For the purpose of this clause, "generation" means a period comprising of twentyfive years.
- (p) "Village" means -
  - (i) a village referred to in clause (b) of section 4 of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or
  - (ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
  - (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
  - (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;
- (q) "Wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

## **CHAPTER II**

### **FOREST RIGHT:**

3. (1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-
- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
  - (b) Community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;
  - (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
  - (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
  - (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
  - f) rights in or over disputes lands under any



nomenclature in any State where claims are disputed;

- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;
- (i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;
- (j) rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;
- (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
- (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;
- (m) right to *in situ* rehabilitation including alternative land in cases where the Scheduled Tribes or other traditional forest dwellers have been illegally evicted

or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13<sup>th</sup> day of December, 2005.

- (2) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-

- (a) Schools;
- (b) dispensary or hospital;
- (c) anganwadis;
- (d) fair price shops;
- (e) electric and telecommunication lines;
- (f) tanks and other minor water bodies;
- (g) drinking water supply and water pipelines;
- (h) water or rain water harvesting structures;
- (i) minor irrigation canals;
- (j) non-conventional source of energy;
- (k) skill up-gradation or vocational training centres;
- (l) roads; and
- (m) community centres:

Provided that such diversion of forest land shall be allowed only if,-

- (1) (1) This Act may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.



- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,-i) the forest land to be diverted for the purposes mentioned in this subsection is less than one hectare in each case; and

- (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

### **CHAPTER III**

#### **RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS**

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in -
- (a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in section 3;
  - (b) the other traditional forest dwellers in respect of all forest rights mentioned in section 3.
- (2) The forest rights recognized under this Act in critical wildlife habitats of National Parks and Sanctuaries may subsequently be modified or resettled, provided that no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except

in case all the following conditions are satisfied namely:-

- (a) the process of recognition and vesting of rights as specified in section 6 is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the Wild Life (Protection) Act, 1972 that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as, co-existence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and the policy of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promises package;

Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be



subsequently diverted by the State Government or the Central Government or any other entity for other uses.

- (3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13<sup>th</sup> day of December, 2005.
- (4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.
- (5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.
- (6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such and shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area

under actual occupation and shall in no case exceed an area of four hectares.

- (7) the forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.
  - (8) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.
5. The holders of any rights, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to -
- (a) protect the wild life, forest and biodiversity;
  - (b) ensure that adjoining catchment areas, water sources and other ecological sensitive areas are adequately protected;
  - (c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;
  - (d) ensure that the decisions taken in the Gram



Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.

## **CHAPTER IV**

### **AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS**

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.
- (2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition.

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

- (3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.
- (4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

- (5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.
- (6) The decision of the District Committee on the record of forest rights shall be final and binding.
- (7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest



rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

- (8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by the respective Panchayati Raj Institutions, of whom two shall be the Scheduled Tribe members and at least one shall be a woman, as may be prescribed.
- (9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

## **CHAPTER V**

### **OFFENCES AND PENALTIES**

- 7. Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or Committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

8. No court shall take cognizance of any offence under section 7 unless any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

## **CHAPTER VI**

### **MISCELLANEOUS**

9. Every member of the authority referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
10. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done by or under this Act.



- (2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.
- (3) No suit or other legal proceeding shall lie against any authority as referred to in Chapter IV including its Chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.
- 11. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorized by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.
- 12. In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.
- 13. Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
- 14. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.

- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all any of the following matters, namely:-
  - (a) procedural details for implementation of the procedure specified in section 6;
  - (b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;
  - (c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;
  - (d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;
  - (e) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made to the Central Government under this Act shall be laid, as soon as may be after it is made, before each House Parliament, while it is in session, for a total period of thirty days which may be comprised in on session or in two or more successive sessions, and if,



before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

**K.N. CHATURVEDI,**

Secy. to the Govt. of India.





**Scheduled Tribes  
and  
other Traditional Forest  
Dwellers  
(Recognition of Forest Rights)  
Rules 2007**





(TO BE PUBLISHED IN THE GAZETTE OF INDIA,  
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)  
OF DATED 1<sup>st</sup> JANUARY, 2008)

**GOVERNMENT OF INDIA**

MINISTRY OF TRIBAL AFFAIRS

New Delhi, the 1<sup>st</sup> January, 2008

**NOTIFICATION**

G.S.R. \_\_\_\_\_ (E). \_\_\_\_\_

WHEREAS the draft Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 were published, as required by sub-section (1) of section 14 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) under the notification of the Government of India in the Ministry of Tribal Affairs number G.S.R.437(E), dated the 19<sup>th</sup> June, 2007 in the Gazette of India, Part II, Section 3, sub-section (i) of the same date, inviting objections and suggestions from all persons likely to be affected thereby, before the expiry of the period of forty-five days from the date on which the copies of the Gazette containing the said notification are made available to the public;

AND WHEREAS copies of the said Gazette were made available to the public on 25.06.2007;

AND WHEREAS the objections and suggestions received from the public in respect of the said draft rules have been duly considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by sub-sections (1) and (2) of section 14 of the Scheduled Tribes

and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the Central Government hereby makes the following rules for recognizing and vesting the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers residing in such forests, namely:-

**1. Short title, extent and commencement.-**

- (1) These rules may be called the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.
- (2) They shall extend to the whole of India except the State of Jammu and Kashmir.
- (3) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.-**

- (1) In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
  - (b) "bonafide livelihood needs" means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of sub-section (1) of section 3 of the Act;
  - (c) "claimant" means an individual, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act;
  - (d) "disposal of minor forest produce" under clause © of sub-section (1) of section 3 of the Act shall include local level processing, value addition,



transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood;

(e) "Forest Rights Committee" means a committee constituted by the Gram Sabha under rule 3;

(f) "section" means the section of the Act;

(2) The words and expressions used and not defined in these rules but defined in the Act, shall have the meanings respectively assigned to them in the Act.

### **3. Gram Sabha.-**

(1) The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least one-third members shall be the Scheduled Tribes:

Provided that not less than one-third of such members shall be women:

Provided further that where there are no Scheduled Tribes, at least one-third of such members shall be women.

(2) The Forest Committee shall decide on a chairperson and a secretary and intimate it to the Sub-Divisional Level Committee.

(3) When a member of the Forest Rights Committee is also a claimant of individual forest right, he shall inform the Committee and shall not participate in the verification proceedings when his claim is considered.

**4. Functions of the Gram Sabha.-**

- (1) The Gram Sabha shall-
  - (a) initiate the process of determining the nature and extent of forest rights, receive and hear the claims relating thereto;
  - (b) prepare a list of claimants of forests rights and maintain a register containing such details of claimants and their claims as the Central Government may by order determine;
  - (c) pass a resolution on claims on forest rights after giving reasonable opportunity to interest persons and authorities concerned and forward the same to the Sub-Divisional Level Committee;
  - (d) consider resettlement packages under clause (e) of sub section (2) of section 4 of the Act and pass appropriate resolutions; and
  - (e) constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.
- (2) The quorum of the Gram Sabha meeting shall be not less than two thirds of all members of such Gram Sabha:

Provided that where there is a heterogeneous population of Scheduled Tribes and non Scheduled Tribes in any village, the members of the Scheduled Tribe, primitive tribal groups (PTGs) and pre-agricultural communities shall be adequately represented.

- (3) The Gram Sabha shall be provided with the



necessary assistance by the authorities in the State.

**5. Sub-Divisional Level Committee.-**

The State Government shall constitute Sub-Divisional Level Committee with the following members, namely:-

- (a) Sub-Divisional Officer or equivalent officer - Chairperson;
- (b) Forest Officer in charge of a Sub-division or equivalent officer - Member
- (c) Three members of the Block or Tehsil level Panchayats to be nominated by the District Panchayat of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to the primitive tribal groups and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council or other appropriate zonal level, of whom at least one shall be a woman member; and
- (d) An officer of the Tribal Welfare Department in-charge of the Sub-division or where such officer is not available the officer in-charge of the tribal affairs.

**6. Functions of the Sub-Divisional Level Committee.-**

The Sub-Divisional Level Committee (SDLC) shall –

- (a) provide information to each Gram Sabha about their duties and duties of holder of forest rights

and other towards protection of wildlife, forest and biodiversity with reference to critical flora and fauna which need to be conserved and protected;

- (b) Provide forest and revenue maps and electoral rolls to the Gram Sabha or the Foest Rights Committee;
- (c) collate all the resolutions of the concerned Gram Sabhas;
- (d) consolidate maps and details provided by the Gram Sabhas;
- (e) Examine the resolutions and the maps of the Gram Sabhas to ascertain the veracity of the claims;
- (f) hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights;
- (g) hear petitions from persons, including State agencies, aggrieved by the resolutions of the Gram Sabhas;
- (h) co-ordinate with other Sub-Divisional Level Committees for inter subdivisional claims;
- (i) prepare block or tehsil-wise draft record of proposed forest rights after reconciliation of government records;
- (j) forward the claims with the draft record of proposed forest rights through the Sub-Divisional Offier to the District Level Committee for final decision;
- (k) raise awareness among forest dwellers about the objectives and procedurès laid down under the Act and in the rueles;



- (l) ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A & B) of these rules;
- (m) ensure that the Gram Sabha meetings are conducted in free, open and fair manner with requisite quorum.

**7. District Level Committee.-**

The State Government shall constitute District Level Committee (DLC) with the following members, namely:-

- (a) District Collector or Deputy Commissioner - Chairperson;
- (b) Concerned Divisional Forest Officer or concerned Deputy Conservator of Forest - Member;
- (c) three members of the district panchayat to be nominated by the district panchayat, of whom at least two shall be the Scheduled Tribes preferably those who are forest dwellers, or who belong to members of the primitive tribal groups, and where there are no Scheduled Tribes, two members who are preferably other traditional forest dwellers, and one shall be a woman member; or in areas covered under the Sixth Schedule to the Constitution, three members nominated by the Autonomous District Council or Regional Council of whom at least one shall be a woman member; and
- (d) an officer of the Tribal Welfare Department in-charge of the district or where such officer is not available, the officer in charge of the tribal affairs.

**8. Function of District Level Committee.-**

The District Level Committee Shall-

- (a) ensure that the requisite information under clause (b) or rule 6 has been provided to Gram Sabha or Forest Rights Committee;
- (b) examine whether all claims, especially those of primitive tribal groups, pastoralists and nomadic tribes, have been addressed keeping in mind the objectives of the Act;
- (c) consider and finally approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee;
- (d) hear petitions from person aggrieved by the orders of the Sub-Divisional Level Committee;
- (e) co-ordinate with other districts regarding inter-district claims;
- (f) issue directions for incorporation of the forest rights in the relevant government records including record of rights;
- (g) ensure publication of the record of forest rights as may be finalized; and
- (h) ensure that a certified copy of the record of forest rights and title under the Act, as specified in Annexures II & III to these rules, is provided to the concerned claimant and the Gram Sabha respectively;

**9. State Level Monitoring Committee.-**

The State Government shall constitute a State Level Monitoring Committee with the following members, namely:-

- (a) Chief Secretary - Chairperson;



- (b) Secretary, Revenue Department - Member;
- (c) Secretary, Tribal or Social Welfare Department - Member;
- (d) Secretary, Forest Department - Member;
- (e) Secretary, Panchayati Raj - Member;
- (f) Principal Chief Conservator of Forests - Member;
- (g) Three Scheduled Tribes member of the Tribes Advisory Council, to be nominated by the Chairperson of the Tribes Advisory Council and where there is no Tribes Advisory Council, three Scheduled Tribes members to be nominated by the State Government;
- (h) Commissioner, Tribal Welfare or equivalent who shall be the Member-Secretary.

**10. Functions of the State Level Monitoring Committee.-**

The State Level Monitoring Committee shall-

- (a) devise criteria and indicators for monitoring the process of recognition and vesting of forest rights;
- (b) monitor the process of recognition, verification and vesting of forest rights in the State;
- (c) furnish a six monthly report on the process of recognition, verification and vesting of forest rights and submit to the nodal agency such returns and reports as may be called for by the nodal agency;
- (d) on receipt of a notice as mentioned in section 8 of the Act, take appropriate actions against the concerned authorities under the Act;

- (e) monitor resettlement under sub-section (2) of section 4 of the Act.

**11. Procedure for filing, determination and verification of claims by the Gram Sabha.**

- (1) The Gram Sabhas shall-
  - (a) call for claims and authorize the Forest Rights Committee to accept the claims in the Form as provided in Annexure-I of these rules and such claims shall be made within a period of three months from the date of such calling of claims along with at least two of the evidences mentioned in rule 13, shall be made within a period of three months:

Provided that the Gram Sabha may, if consider necessary, extend such period of three months after recording the reasons thereof in writing.

- (b) fix a date for initiating the process of determination of its community forest resource and intimate the same to the adjoining Gram Sabhas where there are substantial overlaps, and the Sub-Divisional Level Committee.
- (2) The Forest Rights Committee shall assist the Gram Sabha in its functions to-
  - (i) receive, acknowledge and retain the claims in the specified form and evidence in support of such claims;
  - (ii) prepare the record of claims and evidence including maps;
  - (iii) prepare a list of claimants on forest rights;
  - (iv) verify claims as provided in these rules;



- (v) present their findings on the nature and extent of the claim before the Gram Sabha for its consideration.
- (3) Every claim received shall be duly acknowledge in writing by the Forest Rights Committee.
- (4) The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for community forest rights in Form B as provided in Annexure I of these Rules.
- (5) The Gram Sabha shall on receipt of the findings under clause (v) of sub-rule (2), meet with prior notice, to consider the findings of the Forest Rights Committee, pass appropriate resolutions, and shall forward the same to the Sub-Divisional Level Committee.
- (6) The Secretary of Gram Panchayat will also act as Secretary to the Gram Sabha in discharge of its functions.

**12. Process of verifying claims by Forest Rights Committee.-**

- (1) The Forest Rights Committee shall, after due intimation to the concerned claimant and the Forest Department-
  - (a) visit the site and physically verify the nature and extent of the claim and evidence on the site;
  - (b) receive any further evidence or record from the claimant and witnesses;
  - (c) ensure that the claim from pastoralists and

nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present;

- (d) ensure that the claim from member of a primitive tribal group or preagricultural community for determination of their rights of habitat, which may either be through their community or traditional community institution are verified when such communities or their representatives are present; and
  - (e) prepare a map delineating the area of each claim indicating recognizable landmarks.
- (2) The Forest Rights committee shall then record its findings on the claim and present the same to the Gram Sabha for its consideration.
- (3) If there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committee of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing:
- Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution.
- (4) On a written request of the Gram Sabha or the Forest Rights Committee for information, records or documents, the concerned authorities



shall provided an authenticated copy of the same to the Gram Sabha or Forest Rights Committee, as the case may be, and facilitate its clarification, if required, through an authorized officer.

**13. Evidence for determination of forest rights.-**

- (1) The evidence for recognition and vesting of forest rights shall, inter alia, include-
  - (a) public documents, Government records such as Gazetteers, Census, Survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, *pattas* or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;
  - (b) Government authorized documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
  - (c) physical attributes such as house, huts and permanent improvements made to land including leveling, bunds, check dams and the like;
  - (d) quasi-judicial and judicial records including court orders and judgements;
  - (e) research studies, documentation of customs and traditions that illustrate the enjoyment of any forest rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;
  - (f) any record including maps, record of rights, privileges, concessions, favours, from erstwhile

princely States or provinces or other such intermediaries;

- (g) traditional structures establishing antiquity such as wells, burial grounds, sacred places;
- (h) genealogy tracing ancestry to individuals mentioned in earlies land records or recognised as having been legitimate resident of the villae at an earlier period of time;
- (i) statement of elders other than claimants, reduced in writing.

(2) An evidence for Community Forest Rights shall, inter laia, include-

- (a) community rights such as *nistar* by whatever name called;
  - (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water fro human or livestock use, medicinal plant collection territories of herbal practitioners;
  - (c) remnants of structures built by the local community, sacred trees, groves and ponds or riverine areas, burial or cremation grounds;
- (3) The Gram Sabha, the Sub-Divisional Level Committee and the District Level Committee shall consider more than one of the above-mentioned evidences in determining the forest rights.

#### **14. Pettitions to Sub-Divisional Level Committee.-**

- (1) Any person aggrieved by the resolution of the Gram Sabha may within a period of sixty days from the date of the resolution file a petition to the Sub-Divisional Level Committee.



- (2) The Sub-Divisional Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Gram Sabha in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The Sub-Divisional Level Committee may either allow or reject or refer the petition to concerned Gram Sabha for its reconsideration.
- (4) After receipt of such reference, the Gram Sabha shall meet within a period of thirty days, hear the petitioner, pass a resolution on that reference and forward the same to the Sub-Divisional Level Committee.
- (5) The Sub-Divisional Level Committee shall consider the resolution of the Gram Sabha and pass appropriate orders, either accepting or rejecting the petition.
- (6) Without prejudice to the pending petitions, Sub-Divisional Level Committee shall examine and collate the records of forest rights of the other claimants and submit the same through the concerned Sub-Divisional Officer to the District Level Committee.
- (7) In case of a dispute between two or more Gram Sabhas and on an application of any of the Gram Sabhas or the Sub-Divisional Level Committee on its own, shall call for a joint meeting of the concerned Gram Sabhas with a view to resolving the dispute and if no mutually agreed solution can be reached within a period of thirty days, the Sub-Divisional Level Committee shall decide

the dispute after hearing the concerned Gram Sabhas and pass appropriate orders.

**15. Petitions to District Level Committee.-**

- (1) Any person aggrieved by the decision of the Sub-Divisional Level Committee may within a period of sixty days from the date of the decision of the Sub-Divisional Level committee file a petition to the District Level Committee.
- (2) The District Level Committee shall fix a date for the hearing and intimate the petitioner and the concerned Sub-Divisional Level Committee in writing as well as through a notice at a convenient public place in the village of the petitioner at least fifteen days prior to the date fixed for the hearing.
- (3) The District Level Committee may either allow or reject or refer the petition to concerned Sub-Divisional Level Committee for its reconsideration.
- (4) After receipt of such reference, the Sub-Divisional Level Committee shall hear the petitioner and the Gram Sabha and take a decision on that reference and intimate the same to the District Level Committee.
- (5) The District Level Committee shall then consider the petition and pass appropriate orders, either accepting or rejecting the petition.
- (6) The District Level Collector or District Commissioner for necessary correction in the records of the Government.
- (7) In case there is a discrepancy between orders of two or more Sub-Divisional Level Committees, the District Level Committee or its own, shall call



for a joint meeting of the concerned Sub-Divisional Level Committees with a view to reconcile the differences and if no mutually agreed solution can be reached, the District Level Committee shall adjudicate the dispute after hearing the concerned Sub-Divisional Level Committees and pass appropriate orders.

**Dr. Bachittar Singh,**

Joint Secretary

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