



INDIAN INSTITUTE OF DALIT STUDIES

Devoted to Studies on Social Exclusion, Marginalised Groups and Inclusive Policies

**Local Governance in the Fifth Scheduled Tribal Areas:
A Study of Maharashtra and Odisha in the
Light of PESA Act of 1996**

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**Local Governance in the Fifth Scheduled
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Foreword

The Indian Institute of Dalit Studies (IIDS) is among a handful of Indian organizations that have pioneered research exclusively on development issues of the marginalized groups and socially excluded communities. Over the last 12 years, IIDS has carried out several studies on different aspects of social exclusion and discrimination of the historically marginalized social groups, such as Scheduled Castes, Scheduled Tribes and Religious Minorities in India and other parts of the sub-continent. The Working Paper Series disseminates empirical findings of on-going research and conceptual development on issues related to the forms and nature of social exclusion and discrimination. Some of our papers also critically examine inclusive policies for the marginalized social groups.

The working paper, 'Local Governance in the Fifth Scheduled Tribal Areas: A Study of Maharashtra and Odisha in the Light of PESA Act of 1996' attempts to analyse the implementation of local governance in the fifth scheduled tribal areas in the two states. The paper also analyses the effect of PESA [Panchayats Extension to Scheduled Areas] on traditions and customs, cultural identity, community resources and customary mode of dispute resolution. The paper highlights that the PESA Act 1996 empowers the gram sabha as the core institution of governance in scheduled areas. It points out that the Act enables the local community to regulate various crucial issues such as identification and selection of beneficiaries, reservation of seats, nomination of persons of unrepresented scheduled tribes to the panchayats, and prevention of alienation of land and restoration of alienated tribal land. The paper also suggests various modifications in the PESA Act for its better implementation.

We hope the working paper will be helpful to academics, students, activists, civil society organisations and policymakers.

Nidhi S. Sabharwal
Director

Contents

1. Introduction	7
2. Current Status of the PESA	8
3. The Study Methodology	15
4. Panchayat Raj in Maharashtra and Odisha	16
5. PESA and the State Laws in Maharashtra and Odisha	17
6. Findings of the Study	19
7. Conclusion and Recommendations	44
Endnotes	47
References	51

Local Governance in the Fifth Scheduled Tribal Areas: A Study of Maharashtra and Odisha in the Light of PESA¹ Act of 1996²

C.R. Bijoy*
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1. Introduction

India has a long history and strong traditions of 'democratic' institutions from ancient times interfacing between the predominantly agrarian economies, its village assemblies, and councils, with the higher authorities—local chieftains to maharajas—leaving the villages to a great extent to function as self-governing village republics. Major transformation and restructuring of the administration and power hierarchy began with British colonialism.

Article 40 in the Directive Principles of State Policy of the Constitution of India, which is not enforceable, reiterated that: "The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." The few states that enacted laws did not sustain the growth of the formal Panchayat Raj Institutions (PRIs) resulting in their decline. In order to reconstruct local governance and to bring in uniformity, the 73rd (Panchayat Raj) and 74th (Nagarpalika) constitutional Amendment Acts were passed on 22 and 23 December 1992 respectively adding Part IX titled "The Panchayats" and Part IXA titled "The Municipalities". The Acts transferred 29 subjects to the Panchayats and 18 to the Municipalities. Within a year of the Act coming

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into force, the States were to make suitable modifications to their laws to be in conformity with the amendments.

The 73rd and 74th Amendments excluded the Fifth and Sixth Schedules areas amongst others. The Parliament was to extend its provisions by enacting separate laws. Based on Dilip Singh Bhuria Committee recommendations of 1995 and in response to the political pressure of the National Front for Tribal Self-Rule, a coalition of struggle based mass organisations at the national level,³ the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA)⁴ was enacted on 24 December 1996, extending Part IX of the Constitution to the Fifth Schedule Areas. Meanwhile, the urban enclaves in the scheduled areas continue to be governed by the state municipal laws in violation of the Constitution.

PESA promotes people-centric governance marking a departure from colonial laws of governance that pervades the administration of the people and the natural resources. The gram sabha is to be the core institution of governance in the scheduled areas. The nine states having Fifth Schedule Areas, namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Orissa and Rajasthan incorporated PESA provisions to the state panchayat laws within one year of the coming into force of PESA.

2. Current Status of the PESA

A Planning Commission working group report⁵ that also reviewed the implementation of PESA concluded without mincing words that:

All States have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts. Certain gaps continue to exist. Most States are also yet to amend the subject laws and rules, such as those relating to money lending, forest, mining and excise to harmonise with PESA. Though the provisions in such laws are legally invalid after December 12, 1997, they continue to be followed by departments and their functionaries for want of clear instructions and guidelines. Powers statutorily devolved upon the Gram Sabha and Panchayats are not matched by the concomitant transfer of funds and functionaries resulting in the non-exercise of such powers. States have, over the years, been repeatedly urged to expedite this process, but

progress has been slow and often, only symbolic, with no real intention to operationalise the provisions in spirit.

Ministry of Panchayat Raj concedes that:

Of 94 PESA districts, 32 are also Extremist Affected Districts (EADs). Of 76 EADs, 32 are PESA districts. Of 33 Most Extremist Affected Districts, 16 are PESA districts. The major causes of extremism in these areas are indifference to the needs of the people in governance, distress caused by land alienation and displacement (loss of land, livelihood, collective identity, culture) and lack of control over local resources. People-centric governance and people centric planning & implementation in these areas is essential for containing Left Wing Extremism, and can be brought about through the implementation of PESA in letter and spirit. This point has been emphasized in the Seventh Report of the Second Administrative Reforms Commission, 'Capacity Building for Conflict Resolution', the report of the Expert group constituted by the Planning Commission on 'Development Challenges in Extremist Affected Areas' and the Standing Committee on Inter-sectoral Issues relating to Tribal Development on Raising Standards of Administration in Tribal Areas."⁶

PESA was hailed as breakthrough legislation to democratise governance into a community or people-centric governance and particularly for the scheduled tribes where the situation was described as governance deficit marked also by mal-governance. A number of assessments of PESA by official bodies and experts have been made. The Seventh Report of the Second Administrative Reforms Commission, 'Capacity Building for Conflict Resolution: Friction to Fusion,'⁷ (2008) amongst others, recommends:

Performance of the States in amending their Panchayati Raj Acts and other regulations to bring them in line with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) and in implementing these provisions may be monitored and incentivised by the Union Ministry of Panchayati Raj... While all States in the Fifth Schedule Area have enacted compliance legislations vis-à-vis PESA, their provisions have been diluted by giving the power of the Gram Sabha to other bodies. Subject matter laws and rules in respect of money lending, forest, mining and excise have not also been amended. This needs to be done. In case of default, Government

of India would need to issue specific directions under Proviso 3 of Part A of the Fifth Schedule, to establish a forum at the central level to look at violations and apply correctives. The Commission would like to re-iterate the importance of the Annual Reports of the Governors under the Fifth Schedule of the Constitution... There is need to harmonise the various legislations and government policies being implemented in tribal areas with the provisions of PESA. The laws that require harmonisation are the Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest Conservation Act, 1980, and the Indian Registration Act. National policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, Wildlife Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would also require harmonisation with PESA.

The Report of the Expert group constituted by the Planning Commission on 'Development Challenges in Extremist Affected Areas' (2008)⁸ observes that:

The areas in Central India where unrest is prevailing covers several States (like Andhra Pradesh, Orissa, Chhattisgarh, Madhya Pradesh, Jharkhand and part of Maharashtra) are minimally administered. State interventions both for development and for law and order had been fairly low. In fact there is a kind of vacuum of administration in these areas which is being exploited by the armed movement, giving some illusory protection and justice to the local population.

The Report, amongst others, recommends:

In view of the fact that governance in the Scheduled Areas with regard to many a vital aspect of tribal life is without any authority of law, the concerned Governors should issue a notification under Para 5(1) of the Fifth Schedule (to be referred hereafter in brief 'Para 5(1) Notification') to the effect that 'Notwithstanding anything in the Constitution, the Panchayat Act or relevant Acts of the Parliament or the Legislature of the State for the time being in force, the provisions of PESA shall prevail.' This is necessary to ensure that there is no ambivalence or contradictions in the frame of governance at the village level as a result of diverse legal provisions made from time to time and extended to the Scheduled Areas in routine.

The Sixth Report of the Second Administrative Reforms Commission entitled 'Local Governance: An Inspiring Journey into the Future' (2007)⁹ concludes that:

Technically under Section 5 of the PESA Act all such laws have automatically become invalid after December 12, 1997. But in practice these laws are being still followed by the State Government machinery.

The report further recommends that:

The Union and State legislations that impinge on provisions of PESA should be immediately modified so as to bring them in conformity with the Act. If any State exhibits reluctance in implementing the provisions of PESA, Government of India may consider issuing specific directions to it in accordance with the powers given to it under Proviso 3 of Part A of the Fifth Schedule. Performance of the States in amending their Panchayati Raj Acts and other regulations to bring them in line with the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) and in implementing these provisions may be monitored and incentivised by the Union Ministry of Panchayati Raj.¹⁰

The MoPR had constituted committees to examine various issues coming within the ambit of PESA is of immense importance to tribal people's lives. For instance, the A.K. Sharma Committee on 'Issues relating to Minor Forest Produce in PESA States' (February 2007) and 'Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce', May 2011,¹¹ and sent to Ministry of Tribal Affairs and Ministry of Environment and Forests; and Raghav Chandra Report on 'Land Alienation, Displacement, Rehabilitation and Resettlement' in the light of land and mineral provisions in PESA¹². Institutions such as the National Institute of Rural Development (NIRD) were commissioned by MoPR to prepare training modules and materials on PESA and also to train state-level officials.

MoPR constituted a sub-committee led by Dr. B.D. Sharma which brought out the "Report of the Sub-Committee appointed by the Ministry of Panchayati Raj to draft model Guidelines to vest gram sabhas with powers as envisaged in PESA"¹³. This was followed in 2009 when "Model Rules for PESA 1996" was

circulated to the States for their consideration. Subsequently, a Cabinet Note for amending PESA Act was circulated to 9 PESA States and Central Ministries in March 2010 to remove infirmities and strengthen implementation. This was followed up by issuing a “Model Guidelines to Vest Gram Sabhas with Powers as Envisaged in PESA”¹⁴ to the PESA States. Further MoPR issued an advisory “Effective implementation of PESA particularly in the context of prevailing Extremism” on 21 May 2010. There were a series of visits and consultations to bring clarity on issues of implementation. Review of actual implementation was also conducted. States were requested to amend laws in compliance with PESA, formulate appropriate rules, undertake capacity building of Gram Sabhas, Panchayats and officials, et cetera. MoPR had urged the States as well as the central ministries to amend subject laws relating to forests, excise, mining land acquisition, etc., to make them PESA compliant.

Despite these, the states and the Centre did not respond adequately. Most of the states have not framed rules for implementation of PESA so far.¹⁵ Some positive developments however would include framing of rules in Andhra Pradesh and Himachal Pradesh, preparation of training resources in Madhya Pradesh, Andhra Pradesh and Chhattisgarh. The states are reluctant to amend Panchayat and subject laws as per PESA. Many of the issues, such as control of gram sabhas over minor forest produce, consultation before land acquisition, right of gram sabha to preserve community resources, etc., are extremely contentious. Where state Panchayati Raj departments are willing to take action, the line departments such as forest, mining, excise, etc., differ leading to internal conflict. The crucial capacity-building of gram sabhas and panchayats has not been forthcoming.

A number of official reports, as quoted above, have already captured the lacunae in the incorporation of the provisions under PESA in the states.¹⁶ Some of them are:

1. When the non-compliance in the state law was pointed out, the States justified their actions that they were perfectly within their legal competence to make such modifications. The argument that PESA being the extension to a constitutional amendment and therefore a part of the Constitution is still debated and unsettled within the concerned ministries.
2. The states took the flexible provisions of ‘the gram sabha or the panchayats

at appropriate level' in PESA, and used their discretion to empower the panchayats at higher level rather than the gram sabha against the basic tenet of PESA, except in the case of Madhya Pradesh¹⁷ because of strong people's movement, the panchayats were assigned a supporting role to the gram sabha. The ritual of gram sabhas functioning under duress particularly when it came to land acquisition or being neglected in others, continued.

The 7th Report of the Second Administrative Reforms Commission 'Capacity Building for Conflict Resolution' for instance recommended¹⁸ that:

- a. While all states in the Fifth Schedule Area have enacted compliance legislations vis-à-vis PESA, their provisions have been diluted by giving the power of the gram sabha to other bodies. Subject matter laws and rules in respect of money lending, forest, mining, and excise have not also been amended. This needs to be done. In case of default, Government of India would need to issue specific directions under Proviso 3 of Part A of the Fifth Schedule, to establish a forum at the central level to look at violations and apply correctives. The Commission would like to reiterate the importance of the annual reports of the governors under the Fifth Schedule of the Constitution.
- b. Awareness campaigns should be organised in order to make the tribal population aware of the provisions of PESA and the 73rd amendment to the Constitution so as to demand accountability in cases in which the final decisions are contrary to the decisions of the gram sabha or panchayat.
- c. There should be a complete overhaul and systematic re-organisation of existing land records with free access to information about land holdings.
- d. There is a need to harmonise the various legislations and government policies being implemented in tribal areas with the provisions of PESA. The laws that require harmonisation are the Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, and the Indian Registration Act. National policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, Wildlife Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would also require harmonisation with PESA.
- e. Mining laws applicable to Scheduled Tribal Areas should be in conformity

with the principles of the Fifth and Sixth Schedules of the Constitution.

- f. Government should select such police, revenue and forest officials who have the training and zeal to work in tribal areas and understand as well as empathise with the population they serve.
- g. A national plan of action for comprehensive development which would serve as a road map for the welfare of the tribals should be prepared and implemented.
- h. There should be convergence of regulatory and development programmes in the tribal areas. For the purpose, a decadal development plan should be prepared and implemented in a mission mode with appropriate mechanism for resolution of conflicts and adjustments.

MoPR¹⁹ laments that:

In spite of the critical importance of implementing PESA in the Schedule V areas and the efforts made by MoPR, there have been problems and gaps. These include:

- a. The PESA Act does not specify rule making powers or provide a time period by which the States have to frame rules. States have generally not framed appropriate rules under PESA, and therefore the official system has not operationalized PESA. While draft model rules for PESA have been framed by MoPR and circulated to the States, the response is yet to come forth.
- b. State and Central subject laws relating to mines and minerals, forests, land acquisition etc. are not PESA compliant. In spite of repeated urging by MoPR, appropriate action in this regard has not been taken.
- c. The wordings of some sections of the PESA Act have been interpreted against the spirit of the Act. Particularly, as the Mungekar Committee has observed P ara 4.22) the States in many cases have taken advantage of the flexible provision of ‘Gram Sabha or Panchayats at the appropriate level’ in PESA and used the discretion in favour of Panchayats, which goes against the basic tenets of PESA.
- d. There is no provision for appeal against the decision of the Gram Sabha, which is not in conformity with the democratic process and introduces an element of absolute power, rather than checks and balances on power of institutions.”

While PESA has been hailed all over as a radical step in democratisation of governance, and the frame now even being recommended as the most suitable frame of governance for all parts of the country, there is not only a reluctance, but strong resistance from the existing political and administrative structure. The neo-liberal economic reforms for rapid growth has added to the resistance to these changes, especially in the Scheduled Areas, as these areas are acknowledged to have abundant natural wealth coveted by the industry and urban growth centres. The result has been, for instance, dispossession of the tribal peoples—between 10 million²⁰ to 24 million²¹ have been displaced—and rising disaffection and anger by the threatened tribal peoples.

3. The Study Methodology

This study was carried out to critically analyse the existing gaps in the state Panchayat Raj laws and the subject laws on the matters falling under the purview of PESA, to look at the implementation as experienced in the villages in Scheduled Areas and outside. The study also attempts to locate the real decision-making centres in matters that affect the communities falling within the scope of the subjects under PESA. It broadly examines governance system in both the Scheduled and Non-scheduled Areas of Maharashtra and Odisha.

PESA in its application in the states requires the examination of amendments brought into the state Panchayat Raj laws. These provisions do not have an independent existence as it is embedded within the state Panchayat Raj laws and structure. The subject laws, i.e., the specific state laws related to the subjects that are covered under the provisions in PESA were also examined. Some of these subject laws are amended in pursuance with the PESA related amendments in the State Panchayat Raj laws and some not amended. Some of these subject laws are State subjects and some others concurrent subjects under the Constitution. Of course, there are subjects in the Union list relevant to PESA that also requires amendment but this was not taken up for examination here.

While the examination of the legal space provides the governance frame, but it does not indicate the actual governance as experienced by the communities in the villages. Therefore 11 villages each in Maharashtra and Odisha as per the definition of 'village' in PESA were examined to elicit community's perception

with how the varied provisions in PESA are dealt with as experienced by them. The 11 villages, 6 in the Scheduled Area and 5 outside the Area, in each of these two states were examined to check the differences in governance between the Scheduled Area and outside it.

4. Panchayat Raj in Maharashtra and Odisha

The assessment of the States for 2010–11²² under the Panchayat Empowerment & Accountability Incentive Scheme (PEAIS)²³ placed Maharashtra at the fifth²⁴ position with a Devolution Index (DI) of 53.58 (as compared to 70.01 for Kerala) and above the national average. Odisha was in the thirteenth position (eighteenth in 2008–09), way lower down amongst states with a Devolution Index (DI) of 40.03 and below the national average of 42.38. Maharashtra and Odisha were placed at third and sixteenth in the Incremental Panchayat Devolution Index. Obviously the progress made by Odisha is poor (See Table-1 given below).

Table 1: Panchayat Empowerment & Accountability Incentive Scheme (PEAIS) 2010–11

State/UT's	Overall rank	Framework	Functions	Finances	Functionaries	DI Overall	Incremental Panchayat Devolution Index
1. Maharashtra	5	48.15	64.67	49.97	52.83	53.58	3
2. Odisha	13	63.22	40.35	18.35	61.01	40.03	16
National average		51.32	50.55	37.67	34.67	42.38	

Devolution Index (DI) (cumulative) and Sub-indices, 2010–11

Note: Extracted and compiled from Panchayat Empowerment & Accountability Incentive Scheme (PEAIS) 2010–11

Maharashtra: '11 subjects have been devolved totally to PRIs. For 18 subjects, schemes are implemented by PRIs as agencies from time to time. Zilla Parishad and Gram Panchayat collect taxes. A percentage of taxes collected by the Revenue Department are passed on to the Zilla Parishad. Grants for 11 departments are transferred to PRIs'.²⁵ On the status of Gram Sabha, the status report states: Gram Sabhas have been given extensive powers under

Section 7 of the Mumbai Village Panchayat Act 1958 as amended in 2003.

Odisha: 21 of the 29 listed subject matters in the Eleventh Schedule of the Constitution were assigned to the PRIs. '11 departments have devolved 21 subjects. The functions devolved to PRIs are basically of monitoring'²⁶ on the status of Gram Sabha, the status report states: Gram Sabhas have been given extensive powers. In order to further decentralise the participatory process, Orissa Act provides for meetings of the Palli Sabha at the revenue village level.

5. PESA and the State Laws in Maharashtra and Odisha:

In the above background, what PESA means in terms of offering a governance system in Scheduled Area can be understood by examining the existing state laws and practices. PESA in its application in the legal space of the respective states requires the examination of amendments brought into the State Panchayat Raj laws subsequent to the enactment of PESA in 1996. Needless to say, these provisions do not have an independent existence as it is embedded within the State Panchayat Raj laws and structure. It also requires the subject laws, i.e., the specific state laws related to the subjects which are covered under the provisions in PESA, to be examined in addition. These subject laws specifically regulate these subject matters. Some of these subject laws are amended in pursuance with the PESA-related amendments made in the State Panchayat Raj Laws and some of them may not be amended. Some of these subject laws are state subjects and some others concurrent subjects under the Constitution. Of course, there are subjects in the Union list relevant to PESA that also requires amendment but this has not been taken up for examination here.

In Maharashtra, the state Panchayat law for the intermediate and district level Panchayat namely the Zilla Parishads and Panchayat Samitis Act, 1961 was amended in 1997. The Bombay Village Panchayat Act 1958 was also amended in 1997. However, as many of the provisions of PESA were not reflected in this Act, the Bombay Village Panchayat Act 1958 was further amended years later in 2003 to incorporate some further provisions of PESA. These were examined for compliance with the provisions of PESA 1996 as also some of the subject laws and rules, namely:

- é) Maharashtra Industrial Development Act, 1961;
- è) Maharashtra Housing and Area Development Act 1976;
- é) Maharashtra Irrigation Act 1976;
- (d) Maharashtra Project Affected Persons Rehabilitation Act, 1999;
- ê) Maharashtra Groundwater Regulation for Drinking Water Purposes) Act, 1993;
- f) Maharashtra Management of irrigation System by Farmers Act, 2005;
- g) Bombay Prohibition Act, 1949;
- h) Maharashtra Land Revenue Code 1966;
- í) Bombay Money-Lenders Act, 1946
- j) Maharashtra Transfer of Ownership of Minor Forest Produce in the Scheduled Areas and the Maharashtra Minor Forest Produce Regulation of Trade) Amendment Act 1997
- k) Maharashtra Forest Produce Regulation of Trade) Act, 1969
- (l) Maharashtra Land Revenue Extraction and Removal of Minor Minerals) Rules 1968
- ñ) Maharashtra Restoration of Lands to Scheduled Tribes Act 1974
- fi) Maharashtra Land Revenue Transfer of Occupancy by Tribals to Non-tribals) Rules, 1975
- ó) Maharashtra Land Revenue Restoration of Occupancy Unauthorisedly Transferred by Occupants belonging to Scheduled Tribes) Rule 1969

In Odisha, the state assembly passed amendments to the three Panchayat laws within one year of the notification of PESA. The Orissa Grama Panchayat Act 1964 which was applied to Scheduled Areas from 22 April 1994 was amended in 1997. The Orissa Panchayat Samiti Act 1959 and the Orissa Zilla Parishad Act 1991 were similarly amended in 1997. But elections in Scheduled Areas as per provisions of this amendment were held much later only in 2002. The Orissa Gram Panchayat Act 1964, the Orissa Panchayat Samiti Act 1959 and the Orissa Zilla Parishad Act 1991 were examined for compliance with the provisions of PESA 1996 as also some of the subject laws and Rules such as:

- é) Bihar & Orissa Excise Act 1915,

- b) Orissa Scheduled Areas Transfer of Immovable Property By Scheduled Tribes) Regulations, 1956,
- c) Orissa Scheduled Areas Transfer of Immovable Property By Scheduled Tribes) Rules, 1959,
- d) Orissa Panchayat Samiti Accounting Procedures Rule, 2002,
- e) Orissa Resettlement and Rehabilitation Policy 2006,
- f) Orissa Grama Panchayats Minor Forest Produce Administration) Rules. 2002,
- g) Orissa Timber and Other Forest Produce Transit Rules 1980,
- i) Orissa Forest Produce Control of Trade) Act 1981
- j) Orissa Money-lenders" Act, 1939
- k) Orissa Scheduled Areas) Money-Lenders' Regulations, 1967
- l) Orissa Scheduled Areas) Money-lenders' Rules, 1970
- m) Orissa Pani Panchayat Act, 2002
- n) Orissa Minor Mineral Concession Rules, 1990 and
- p) Orissa Minor Mineral Concession Rules 2004

6. Findings of the Study

Both Maharashtra (since 1958) and Odisha (since 1948) have a long history of Panchayat system. 29 subjects that fall within the purview of the state were to be subject matters to be governed by the PRIs. However, in Maharashtra, only 11 subjects were devolved to the PRIs though schemes under 18 subjects were to be implemented by the PRIs. In Odisha, 21 subjects were devolved to the PRIs. The Maharashtra law has stronger provisions with regard to potential control over the plans and programmes with control over the functionaries by the PRIs including the Gram Sabha as compared to Odisha where the PRIs had a cursory role in calling forth information and in the nature of supervision of the government functionaries. This difference in the status and role of PRIs including the Gram Sabha, to a significant extent, is seen to manifest in the villages. Maharashtra manifested more vibrant and active PRIs including its Gram Sabha as compared to Odisha where the government departments play a dominant role. This general predisposition in local governance is also

carried over to the Scheduled Areas. The Panchayat system in operation in both the states are observed to be deficit in that the PRIs do not fully manifest its own legal powers as is available in law. Therefore the full potential of existing Panchayat laws, despite its weaknesses as observed earlier with regard to compliance with the 73rd Amendment, is a primary important factor. The question is whether PESA in the way it expresses itself through the state Panchayat laws and subject laws marks a significant departure in the governance in the Scheduled Areas.

I. State Laws to be in consonance with PESA Act

PESA Act, Section 4(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.

Except for the provision on Section 54A (a) in the Bombay Village Panchayats Act, 1958, which is related to the competency of the Gram Sabha, there is no indication of how this provision is to be translated into provisions in the state legislation. There is also no provision for redressal when a state legislation is not in consonance with the customary laws, social and religious practices and traditional management practices of community resources. Therefore, it is not PESA compliant.

In Odisha, except for the incorporation of this provision as Section 4(d) in the Orissa Gram Panchayat Act, 1964, which is related to the competency of the Gram Sasar²⁷, there is neither an elaboration nor indication of how this is to be operationalised in the state legislation. There is also no provision for redressal when a state legislation is not in consonance with the customary law, social and religious practices, and traditional management practices of community resources. Therefore, it is not in compliance with the PESA provision.

II. PESA on Village and the Gram Sabha

PESA Act, Section 4(b), (c): 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.

The village as defined in the state laws is not coterminous with the 'village' defined as a hamlet or a group of hamlet in PESA [Sec.4 (b)] but instead it is the geographical region encompassing the Gram Panchayat which is the village which consists of a number of revenue villages. Each revenue village is in turn constituted by a number of habitations (hamlets) which are grouped together. Consequently the 'Gram Sabha' [Sec.4(c)], the assembly that is contrived to be the self-governing body turns out to be spread out far and wide with a large enough population of a few thousands, and therefore unwieldy for it to ever effectively take charge of its affairs as ordained under the law. This then is the fundamental flaw. Therefore the official Gram Sabha, which is the Gram Panchayat Gram Sabha²⁸, is almost non-functional or at best nominal. As a result of this, it follows that this Gram Sabha will not be able to fulfil any of its functions as prescribed in the law with a reasonable level of participation of the majority of the population in the Gram Panchayat. Therefore, Odisha has tried to rectify this by configuring the Palli Sabha, the people at the level of a revenue village, but did not bother to empower this body by the necessary support through changes in the law. There are clear indications that the 'unofficial' Gram Sabha, mostly the traditional Gram Sabha, is functional in varying degrees in almost all the habitations in the case study villages. This is closer in size and functions to the 'village' and 'Gram Sabha' as envisaged in PESA. However, it is to be also noted that the traditional Gram Sabha has its independent existence and is seen as distinctly different in intent from the Gram Panchayat Gram Sabha which is seen as having to do only with various government schemes or programmes implemented through the PRIs and the various government departments.

III. PESA on Traditions and customs, cultural identity, community resources and customary mode of dispute resolution

Section 4(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.

The Gram Sabha is competent to safeguard and preserve traditions and

customs, cultural identity, community resources and customary mode of dispute resolution [Sec. 4(d)]. Though incorporated into the State law in a cursory manner in Maharashtra, there are no provisions on how this is to be exercised. On community resources, Gram Sabha is only to be consulted or it can make recommendations. On dispute resolution, the law simply states that the Gram Sabha is competent. In the absence of enabling provisions and grievance redressal, this provision remains inoperative. A similar incorporation has taken place in Odisha state laws with an additional caveat that the dispute resolution is subject to other relevant laws which makes this provision a nullity. In both the states, these provisions are not PESA compliant. In practice, it is the traditional Gram Sabha and not the official Gram Sabha, in varying extent, carries out these functions.

IV. PESA on Plans, programmes and projects of Gram Panchayat

Section 4 (e), (i) Every Gram Sabha shall 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.

The Gram Sabha is to approve plans, programmes and projects of Gram Panchayat [Sec.4 (e) (i)]. In Maharashtra, it is the panchayats at the higher level that is to carry out this function. The Gram Sabha has no role. In Odisha, though the Gram Sabha is conferred these powers, the panchayats at the higher levels do not have to obtain approval from the Gram Sabha. Thus these are not PESA compliant. But in practice, Gram Sabha approval is sought by the Gram Panchayat in some instances in Maharashtra, despite the law not providing for the same. However, in Odisha no approvals are sought from the Gram Sabha despite ironically having such a provision in law.

V. PESA on Identification and selection of beneficiaries

Section 4. (e): ii) Every Gram Sabha shall be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.

The Gram Sabha is responsible for identifying and selecting beneficiaries

[Sec. 4(e)(ii)]. In both the states this provision is incorporated while there is no explicit requirement by the higher level Panchayat bodies to seek this from the Gram Sabha. In effect, this is not PESA compliant. There is far greater possibility that the Gram Sabha identifies and selects beneficiaries in Maharashtra than in Odisha. Only in the case of identifying beneficiaries of various government schemes, an area of popular interest with the community with regard to the Gram Panchayat Gram Sabha, there is some level of participation in influencing Gram Sabha meetings in some instances.

VI. PESA on Certification of utilisation of funds

Section 4 (f): Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for plans, programmes and projects referred to in clause (e).

Panchayat is to obtain certification of utilisation of funds for plans, programmes and projects from the Gram Sabha [Sec.4 (f)]. This provision has been incorporated under Section 54 A(c) of the Bombay Village Panchayat Act, 1958, and the Panchayat has to obtain the utilisation certificate from the Gram Sabha [Section 54B (a)] of the Bombay Village Panchayat Act, 1958. However, the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, do not require the Panchayats, the Panchayat Samitis and Zilla Parishads to obtain any certification of utilisation of funds from the Gram Sabha. Therefore, it is not in compliance with the PESA provision. Across all the case study villages in the Scheduled Area and outside it, the Gram Sabha in Maharashtra did not issue any utilisation certificate; nor did its members know who issues the certificate. Some thought that it was the Sarpanch while others thought that it was the Gram Panchayat officials or the Gram Sevak.

In Odisha, the Gram Sasan has to issue the utilisation certificate to the Gram Panchayat as per Section 3(b) proviso of the Orissa Gram Panchayat Act, 1964. However, Rule 59 of the Orissa Panchayat Samiti Accounting Procedures Rule, 2002, requires the Block Development Officer to 'secure and furnish' the utilisation certificate and not the Gram Sasan. For the Palli Sabha, there is no such provision in law. Therefore, the rules violate the relevant provisions in the Act and it is not in compliance with PESA provision.

In Odisha, the field study shows that the Gram Sasans in both the Scheduled

Area and Non-scheduled Area did not issue the utilisation certificate except in one case (Brahmangaon Adivasi pada in the Non-scheduled Area), where the certificate was approved by a seven-member committee constituted by the Village Level Worker (VLW), a government official. The people were not aware of who the issuing authority was. They thought that it could be the VLWs in most instances or the concerned department officials.

VII. PESA on Reservation of seats

Section 4(g): The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under Part IX of the constitution.

In Maharashtra, reservations of seats for the SCs, the STs, Backward Class of Citizens²⁹ and Women are as determined by the State Election Commission for the Gram Panchayats [Section 10(2)(a) of the Bombay Village Panchayat Act, 1958], and the Panchayat Samiti [Section 58(1)(B)(a) of the Zilla Parishad and Panchayat Samiti Act, 1961] and the Zilla Parishads [Section 12(2) of the Zilla Parishad and Panchayat Samiti Act, 1961] on the basis of the proportion of the population of the communities for whom reservation is sought.

The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, requires under Section 58(1)(B)(a), seats to be reserved for persons belonging to the SCs, STs, Backward class of citizens and women in a manner to be determined by the Chief Election Commissioner. Under Section 58(1) (b), the seats to be reserved shall be proportional to the total number of seats to be filled in by direct election in that Panchayat Samiti as the population of the SCs, as the case may be, the STs, in that Panchayat Samiti area bears to the total population of that area and such seats shall be allotted by rotation to different electoral colleges in a Panchayat Samiti. Following Section 58(1) (1C), reservation of seats (other than the reservation for women) under subsection (1B) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India. Reservation as per the proportion of the population seems to be the norm in compliance with the above laws.

In Odisha, seats are reserved for the SCs and STs in proportion to their respective populations, of which one-third are reserved for women within

them, and 27 per cent of the seats are reserved for the backward classes, of whom one-third are to be women as per Section 10(3) of the Orissa Gram Panchayat Act, 1964. Reservation as per the proportion of the population seems to be the norm in compliance with the above laws.

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

In Maharashtra, the seats reserved for the STs is as per their proportion in the total population of the area [Section 10 (2)(a) of the Bombay Village Panchayat Act, 1958] with the proviso that for Gram Panchayats falling entirely in the Scheduled Area, not less than one-half is reserved for STs. A similar proviso also exists for the Panchayat Samiti [Section 58 (1) (B) (b) of the Zilla Parishads and Panchayat Samiti Act, 1961] and for Zilla Parishads [Section 12(2) (b), respectively of the Zilla Parishads and Panchayat Samiti Act, 1961]. However, in the case of the Gram Panchayats, Panchayat Samitis and Zilla Parishads falling partially in the Scheduled Areas, the number of seats is in proportion to the population of the STs in the respective areas [Section 10(2) (c) of the Bombay Village Panchayat Act, 1958; Section 58(1) (B) (b) and Section 12(2) (b), respectively of the Zilla Parishads and Panchayat Samiti Act, 1961]. Therefore, it is PESA compliant in the Panchayats falling fully in the Scheduled Areas but not so in the Panchayats falling partially in the Scheduled Areas.

The field study data shows that in all the six villages and the respective Gram Panchayats, not less than one-half of the seats are reserved for the STs in the Scheduled Areas. However, the picture is different with regard to the Panchayat Samitis and Zilla Parishads. In the Dahanu and Dhanora Panchayat Samitis (which fall in the Scheduled Area), 12 out of 16 seats and 6 of the 8 seats, respectively, are reserved for STs. However, in the Murbad and Armori Panchayat Samitis (which fall partially in the Scheduled Area), only 2 out of 8, and 2 out of 10 seats, respectively, are reserved for STs. Similarly in the Thane Zilla Parishad and Gadchiroli Zilla Parishad (which fall partially in the Scheduled Area) only 28 out of 68 seats and 21 out of 51 seats, respectively, are reserved for STs. This is in compliance with the Zilla Parishads and Panchayat Samiti Act, but not with the provisions of PESA.

In Odisha, not less than one-half of the seats are reserved for STs in the Gram Panchayats in the Scheduled Area under Section 10(3) (a) of the Orissa Gram Panchayat Act, 1964, in the Panchayat Samiti under Section 16(2) (a) of the Orissa Panchayat Samiti Act, 1959, and in the Zilla Parishad under Section 6(3) of the Orissa Zilla Parishad Act, 1991. It is therefore, PESA compliant. In all the six villages and the respective Gram Panchayats, Panchayat Samitis and the Zilla Parishads, not less than one-half of the seats are reserved for STs in the Scheduled Areas. Of the five villages in the Non-scheduled Areas, in two Gram Panchayats (Jharbeda and Bhatlaida), have more than half ST members, while the corresponding figure is less than half in the remaining four Gram Panchayats.

Provided further that all seats of the Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

In Maharashtra, the office of the Sarpanch is reserved for STs in a Panchayat entirely within the Scheduled Areas (Section 30 of the Bombay Village Panchayat Act) and according to the proportion of their population for SCs and STs [Section 30(4) (a)]. Reservation for the STs as Chairpersons in Gram Panchayats falling within the Scheduled Areas for STs is applicable only if the STs constitute more than half its population [Section 54 (B) (j) of the Bombay Village Panchayat Act, 1958]. The office of the Chairman of the Panchayat Samiti [Section 67(5) of the Zilla Parishads and Panchayat Samiti Act, 1961] is reserved for the STs if the Panchayat Samiti falls entirely within the Scheduled Areas and the ST population is more than 50 per cent. If the Panchayat Samiti falls partially in the Scheduled Areas, then the reservation is according to their proportion in the total population.

The proviso of Section 42 (4) (a) of the Zilla Parishads and Panchayat Samitis Act, 1961, provides for the office of the President of Zilla Parishad to be reserved for STs only if the population of the STs exceeds 50 per cent of the total population in that area; and in the Zilla Parishads falling only partially in the Scheduled Area, the reservation of the Office of the Presidents of the Zilla Parishads will be as per the proportion of STs in the state. It is therefore, not in compliance with the PESA Act.

The case study villages selected are from two districts (Gadchiroli and Thane),

which have parts of the district as the Scheduled Area. Raigarh district has no Scheduled Areas. The six Gram Panchayats (Yerkad, Munjalgoni, Koshimshet–Dhamanshet, Talegaon, Sirshi and Dhakti Dahanu) have STs as the Chairpersons. The Chairpersons of the Panchayat Samitis of the four Blocks (Dhanora and Armori Gadchiroli District; Mokhada and Dahanu in Thane District) are also STs, while those of the two Zilla Parishads (Gadchiroli and Thane Districts) where these blocks belong are not. This is in line with the fact that the GPs and Blocks are in the Scheduled Area while the districts are not wholly situated in the Scheduled Area. This is in accordance with the provisions of the law.

In Odisha, reservation has been stipulated for STs as Sarpanches in the Gram Panchayats, the Chairman of the Panchayat Samiti and Presidents of the Parishads in the Scheduled Area. However, this is subject to the eligibility criterion for standing for election, as per which the candidate should be able to read and write Odia; further, reservation for the post of Chairman of the Panchayat Samiti and President of the Parishad will cease on the expiration of the period specified in Article 334. It is therefore, PESA-compliant, but discriminating against those who are unable to read and write in Odia language.

STs are Chairpersons in the Gram Panchayats of Alliganda, Paniganda and Adava of the Mohana Block and not in the Gram Panchayat of Dambaguda though the entire Mohana Block is a Scheduled Area. This is in violation of the law. The Chairperson of Ankulpur is an ST. The Chairperson of the Mohana Block Panchayat Samiti is also an ST. However, the Chairperson of the Zilla Parishad of Gajapati district (a partially Scheduled Area) is not an ST. In the Non-scheduled Area, the Gram Panchayat of Bhatlaida of the Laikera Block of Jharsuguda District has an ST as Chairperson, so has the Panchayat Samiti. Baunsapal of the Baunsapal Gram Panchayat too has an ST as its Chairperson.

VIII. PESA on Nomination of persons of unrepresented Scheduled Tribes to the Panchayat

Section 4(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.

In Maharashtra, there are no provisions to nominate persons belonging to such STs that have no representation in the Gram Panchayats at any level. Due to the lack of provision in the State law for the nomination of persons belonging to the STs who have no representation in the Gram Panchayat, the Pradhan is not represented or nominated at the Dhanora Block or in Gadchiroli District in the case of the Yerkad GP; Katkari is unrepresented in Mokhada or Thane District in the case of Pendkyachawadi of the Dhamanshet-Koshimshet Group Gram Panchayat, and the Pradhan goes unrepresented at the Armori Block or Gadchiroli District in the case of Vihirgaon of the Sirsi Gram Panchayat. Further, only parts of Gadchiroli and Thane are Scheduled Areas. In comparison, in the Non-scheduled Area villages and their respective Blocks and Districts of Raigarh and Thane, in one instance (Karjat Block of Raigarh District), all the STs are represented. However, in the case of Ransai Margachiwadi village and its Ransai Gram Panchayat of Uran Block of Raigad District, and Brahmangaon Adivasi Pada of the Dhanivli- Brahmangaon Group GP of Murbad Block of Thane District, all the STs are not represented.

In Odisha, the nomination of persons belonging to the STs who do not have any representation in the Panchayats is provided for in the Panchayat Samiti under Section 16(3-c) of the Orissa Panchayat Samiti Act, 1959, and the Parishads at the district level under Section 6(6) of the Orissa Zilla Parishad Act, 1991. Further, it is specified that such nomination shall not exceed one-tenth of the total members elected to the Parishad. It is therefore, PESA compliant.

In all the six case study villages in the Scheduled Area of Odisha, all the STs are represented at the Panchayat Samiti and Zilla Parishad. This is consistent with the provisions in the state law as mentioned above. Compared to this, in the five case study villages in the Non-scheduled Area, STs are not represented in the Palalahada block and Angul district, and the Bhubaneswar block and Khurda district, while in all the remaining three cases, the STs are represented through reservation. This is as per the provisions of the laws.

IX. PESA on Consultation on acquisition of land, re-settling and rehabilitation

Section 4(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 resettling 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.

Consultation of Gram Sabha or the panchayats at the appropriate level on acquisition of land, re-settling and rehabilitation with respect to land acquisition [Sec.4(i)] while being partially compliant with respect to resettlement and rehabilitation in Maharashtra, and complaint in Odisha, however, in practice these provisions exist in gross violation in both states. In Maharashtra, consultation with the Gram Sabha is mandated while in Odisha it is consultation at the Zilla Parishad. In effect, no consultation with the Gram Sabha takes place. The issue of making consultation or at best consent of the Gram Sabha has become a politically vital issue in the light of increasing and widespread land acquisitions for development projects as dams, mining, industries etc in the resource rich tribal tracts. The issue of displacement has become a major national level contentious issue forcing the union government to succumb to the pressure from resistances and resulting conflicts often leading to violence by the armed forces of the State, to amend the existing Land Acquisition Act, 1894, and bring resettlement and rehabilitation within the purview of law. That this has not fructified and the Land Acquisition Act has also not been amended to be PESA compliant is another matter.

In our study of villages in Maharashtra, consultation with the Gram Sabha, though mandated by state law, is not uniformly applied in the villages in Scheduled Area of the State. Two (Yerkad and Vihirgaon) out of the six villages stated that when land was acquired, the Gram Panchayat approval was obtained though the Gram Sabhas were not consulted as required under the law. Only in one village (Gattaneli) was the approval obtained from the Gram Sabha, and the Gram Panchayat was also consulted. In another village (Pendkyachawadi), the people have had no experience with land acquisition.

In two other villages (Katkariwadi and Dhakti Dahanu), no information was provided nor did any consultation take place with the Gram Sabha. The land acquisition process took place in violation of the law. In one of these instances (Talegaon Katkariwadi), the people resisted and despite the Gram Sabha rejecting the proposal for acquisition, the project work commenced.³⁰ As compared to this, in the Non-scheduled Areas, where there was land acquisition in three villages, neither information nor consultation was provided; in two villages, there was no land acquisition; and there was no consultation in three other villages when land was acquired for dams and other development works.

In Odisha, in all the six village case studies, there have been acquisitions for which no information was provided, no Gram Sabhas were consulted, nor was any compensation or resettlement or rehabilitation provided. Of these, in one case (Lakhari), it was the conversion of a reserve forest into a wildlife sanctuary and in another (Paniganda), it was the conversion of the land into reserve forest. These violated the provisions in the laws. In all the five case studies in the Non-scheduled Area, land acquisition took place for an irrigation canal (Jabua and Baunsapal), conversion to forest (Godimagura), infrastructure (Bhatlaida), and building construction (Daruthenga). No information was provided on the acquisition, and the Gram Sabhas were not consulted.

X. PESA on Planning and management of minor water bodies

Section 4(j): Planning and Management of Minor Water bodies in Scheduled Areas shall be entrusted to Panchayats at the appropriate level.

In the provision on planning and management of minor water bodies [Sec. 4(j)] by panchayats at appropriate level, Maharashtra entrusted planning to the Gram Sabha and management to the Panchayat while Odisha entrusted both planning and management to the Zilla Parishad. Though this is technically PESA compliant, the ground reality is mixed with the varying interest and involvement by the Traditional Gram Sabha, Gram Panchayat and government. However, considering that water is projected to become a major contested resource within and between communities in the future, the necessity to define 'minor water bodies', which is absent in PESA, and the

respective role and responsibility of the different PRI structure, particularly the Gram Sabha is important.

In Maharashtra, minor water bodies are managed by the traditional Gram Sabhas in three out of six villages (Yerkad, Gattaneli, and Pendkyachawadi). In one village (Katkariwadi), the minor water bodies are controlled by the government while the quality is maintained by the Gram Panchayat. In another village (Vihirgaon), the Panchayat Samiti and Zilla Parishad manage the minor water bodies and the Gram Sabha passes the resolution. In yet another case study village (Dhakti Dahanu), the Gram Panchayat maintains the water bodies. In the case study villages of the Non-scheduled Area, the Maharashtra Industrial Development Corporation (MIDC) controlled the dam in Ransai Margachiwadi while the fishing rights are granted to outsiders, which leads to conflicts. In another case study village, the Gram Panchayat maintained the ponds, while in yet another, the village committee and the traditional Gram Sabha together managed the water bodies. Stree Gauki, initiated by activists, took care of the water bodies in yet another village while in another; no one was managing or protecting its water bodies. These findings showed a mixed state of affairs in terms of the planning and management of minor water bodies.

In the case study villages in Odisha, two villages (Simuli and Lakhari) depended on streams with no particular efforts at managing them other than using them. In a water-deficit village (Beganda), where the ground water is the source, there are conflicts (with the SCs); there is no planning and management by anyone, nor the existence of a dispute-resolving mechanism except the traditional Gram Sabha. In two other villages, the tube wells are managed by the Gram Panchayats, while in one of them, the traditional Gram Sabha manages the local stream. The control over dam in another village (Adava) by the officials and its diversion leads to water shortage and conflicts. As compared to this, in the Non-scheduled Area, two villages have active Pani Panchayats managing the stream and ponds, and in another village, the ponds are maintained by the Gram Panchayat. Two villages have been protecting the river traditionally.

XI. PESA on Minor minerals

Section 4(k): The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas.

On the provision of recommendations of the Gram Sabha or the panchayats at the appropriate level for prospecting or mining lease of minor minerals [Sec. 4(k)] and grant of concession for exploiting minor minerals [Sec. 4(l)], while Maharashtra requires consultation with the Gram Sabha by the Gram Panchayat who is then to make recommendations to the concerned authorities, Odisha relegated the responsibility to recommend with the higher level Panchayat, the Zilla Parishad, totally eliminating the Gram Sabha from the process. Though PESA compliant, the PRIs, including the Gram Sabha, seemed not to have any role in Maharashtra or Odisha. It was evident that it was the block level officials who were involved with decision-making.

Among the case study villages in Maharashtra, while Vihirgaon had no minor minerals, the community used them freely in Dhakti Dahanu with neither the Gram Panchayat nor the Gram Sabha exerting control over this resource. In fact, even the sand on the beach was being illicitly taken away by outsiders. Talathis, the BDO and the Tahsildar were believed to be the ones to recommend the prospecting or issue of a mining lease. Neither the Gram Sabhas nor the panchayats at the appropriate level had any role to play in this matter nor was their recommendation obtained. This was in violation of the provisions in the laws. However, by and large, people were allowed to use the minor minerals for their personal use. In the Non-scheduled Area villages, there were no minor minerals in three villages. In one village minor minerals were being removed without permission while in another, the Tahsildar recommended the grant of a mining lease. Neither the Gram Sabha nor the panchayats at the appropriate level were involved in making any recommendations.

In the case study villages (one of which was forest area) in the Scheduled Area of Odisha, no prospecting licence or mining lease or concession were issued except in one village (Ankulpur), wherein it was the Tahsildar who sanctioned

the annual lease. However, three villages reported illegal mining with the support of officials. The minor minerals were used by the community. In the case of the Non-scheduled villages, licences or mining leases for extracting minor minerals were issued by the Tahsildar in three instances and by the concerned government department in the rest. No recommendations were sought from the Gram Sabhas.

XII. PESA on Recommendations for the grant of concession for exploiting minor minerals

Section 4(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.

In Maharashtra, even as the Bombay Village Panchayat Act, 1958, has been amended, the subject laws are not in compliance. The state government holds all rights to all minerals including minor minerals. Only concession for the removal of minor minerals for residents of the villages for domestic purpose is provided. Though it is PESA compliant, the Subject laws are not amended to be in conformity with the state Act.

In Odisha, prior recommendation of the Parishads at the district level is required for the grant of concession for the exploitation of minor minerals under Section 3(6) (a) of the Orissa Zilla Parishad Act, 1991. The Gram Sasan, Gram Panchayat or Panchayat Samiti have no role. However, under the Orissa Minor Mineral Concession Rules, 1990, the competent authority is the concerned department of the government, that is, the Tahsildar for the Revenue Department, the Divisional Forest Officer for the Forest Department, and the Mining Officer and Deputy Director of Mines for the Department of Steel and Mines in Schedule IV of the Rules. However, contrary to these provisions, the Orissa Minor Mineral Concession Rules, 2004, does not require any report or clearance from the Gram Panchayat for the grant of quarry permits and the auction of minor minerals specified in item 1(i) of Schedule III of the Rules. For the Palli Sabha, there is no such provision in the law. Though it is PESA compliant, the rules are not amended to be in conformity.

XIII. PESA on Intoxicants

Section 4(m): While endowing the 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.

The panchayats at appropriate level and the Gram Sabha are to enforce prohibition, regulate or restrict sale or consumption of any intoxicant [Sec.4 (m)(i)]. In Maharashtra, the Gram Sabha's decision was primarily required for decision making by the panchayats. In reality illegal sales of liquor was rampant and the PRIs including the Gram Sabha had no role in this function in both States. In Odisha, the Gram Panchayat was entrusted with this function with the concurrence from the Gram Sabha. While it was partially PESA compliant in Maharashtra, it was not so in Odisha (Gram Sabha is also to be empowered which was not).

Three villages in the Scheduled Area of Maharashtra reported the illegal sale of liquor (with the support of the police) while the fourth distilled liquor as a traditional household practice. The fifth had an outlet that had a permit from the Excise Department. There was no role for the Panchayats at the appropriate level or of the Gram Sabha in the decision to issue a permit. This was in violation of the laws. The sixth village had no sale of liquor. The situation was no different in the villages in the Non-scheduled Area. Of the five villages, illegal sales of liquor were carried on in four while there was no liquor sale in the fifth. Overall, the role of the Gram Sabha or the panchayats in controlling or regulating the sales of liquor, whether legal or illegal, exists.

In Odisha, three villages in the Scheduled Area reported the illegal sale of liquor in the village. Another had a licenced outlet and was also conducting illegal sales. Three villages did not have liquor sales in the village but illegal sales were going on outside one of the villages. Of the five villages in the Non-scheduled Area, there was no liquor sales in three of them while another had

an auctioned outlet by the district authority with the fifth having illegal sales with police support. There seems to be no difference in this matter, whether the area is a Scheduled Area or located outside it. The Gram Sasan did not seem to have control over them nor was the Gram Panchayat in control. This violated the provisions in the laws.

XIV. PESA on Ownership of Minor Forest Produce

Section 4(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:

(ii) The ownership of minor forest produce.

Ownership of Minor Forest Produce is vested in the Panchayats at the appropriate level and the Gram Sabha [Sec. 4(m) (ii)]. Both Maharashtra and Odisha are not PESA compliant with the former conferring only regulatory powers with the Gram Panchayat under direction of the Gram Sabha while the latter confers ownership to the Gram Panchayat under the control and supervision of Gram Sabha. Further this provision in PESA is reinforced with the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. The implementation of this law has been weak in most places, not uniform or complete. But the communities by and large have been traditionally collecting MFP, mostly for their own use. However, progressive restriction in some areas is enforced by the forest officials.

Of the six case study villages in Maharashtra, five had forests and the people freely collected forest produce as they carry on with their traditional rights. No permission is taken from the Forest Department. However, permission is required for the transit of the minor forest produce. Except for Dhakti-Dahanu, all the other villages have forest lands. Claims have been made under the Forest Rights Act, 2006.³¹ Most of the claims, including both individual and community claims, have been approved in the case of Gattenali and Vihirgaon; some claims were approved in the case of Yerkad; a few claims

were approved in Talegaon while in the case of Pendkyachawadi, no titles were approved as yet. In the case of Talegaon, a few individual rights were approved, but not the community claims. The right to minor forest produce is one of the rights under this law.

In the five case study villages in the Non-scheduled Areas of Maharashtra, the collection of minor forest produce is common in all the villages. In two of them, the forests are degraded or the availability of minor forest produces is marginal. A decline in forest dependence is reported from one village (Ransai Margachiwadi, a forest settlement). Largely collected for self-use, trade in the minor forest produce is negligible. One village has a Joint Forest Management Committee constituted by the Forest Department, which is not active. Except for one village, all the remaining four have submitted mostly individual claims with some of them also having been approved. In one village, no claims were approved yet. Most of the villages did not make claims for community rights.

In Odisha, the community traditionally collects minor forest produce in all the six villages in Scheduled Areas. Harassment by forest officials is reported in two villages. Another village reports restrictions being imposed by the forest officials in the collection of the forest produce. In the Scheduled Area villages, one village submitted individual rights claims with no approval; two claimed both individual and community rights but no approvals; another claimed both rights and some individual claims were approved. In the case of the five villages in the Non-scheduled Areas, individual rights claims were made with some of them being approved; in another three villages, both individual and community rights were claimed and some individual rights were approved while in another village, no claims were even made.

XV. PESA on Prevention of alienation of land and restoration of alienated tribal land

Section 4(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:

(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.

The Panchayats at the appropriate level and the Gram Sabha are endowed with the power to prevent alienation of land and restoration of alienated tribal land [Sec.4. (m)(iii)]. In Maharashtra the power is vested in the District Collector with the provision that the Gram Sabah can make recommendation through the Gram Panchayat to the District Collector who can permit land transfer to a non-tribal. In Odisha this power is vested with the Gram Panchayat under the control and supervision of the Gram Sabha in the State Panchayat law, while contrary to this, the subject law designates the District Collector with this power. In effect, the Gram Sabha and the Panchayats at appropriate level does not have the power to prevent alienation of land and its restoration. This is not PESA compliant. In reality, land rights are not adequately recognised, land encroachment takes place resulting in land alienation, and transfer of land to non-tribals. Land transfers within tribal people too also take place. Only in very rare instances have there been prevention of land alienation and its restoration.

In Maharashtra, three villages, namely Gattaneli, Pendkyachawadi, and Talegaon Katkariwadi, report that there has been no alienation of ST land to non-tribals. However, in Gattaneli, there is land transfer within STs. Encroachment or land alienation has taken place in three villages (Yerkad, Vhirgaon and Dhakti Dahanu). In Talegaon Katkariwadi, land rights of the Katkari people are not recognised but land acquisition for the construction of a dam has taken place disregarding objections from the Gram Sabha. Only in one instance (Yerkad), the District Collector restored the land. In the other two instances, there has not been any official intervention despite complaints. In the case of Dhakti-Dahanu, where land rights are not fully recognised, threats of encroachment have been resisted with the involvement of people's organisations. There has been no involvement of the Panchayats in preventing land alienation or restoration of the alienated land. Land disputes are taken up by the traditional Gram Sabha and people's resistance in the context of official apathy and lack of response has been the norm in providing some element of protection. All the five case study villages outside the Scheduled Areas reported encroachment by non-tribals and land alienation. There was

neither any official intervention to protect people from land alienation nor any restoration of alienated lands. There are reports of people's resistance to land alienation in three villages with assistance from people's organisations in two of them.

In Odisha, in all the six case study villages, people experience loss of land rights. In Simuli, Paniganda and Adava, land alienation by non-tribals has taken place. There is no intervention by the Gram Panchayat or the District Collector in the prevention of alienation of land or restoration of alienated lands. In Beganda, land rights are not recognised but lands are forcibly occupied by the more powerful SCs with official support. In Lakhari, a forest settlement, in the absence of recognition of rights and the issue of titles to forest land, the threat of displacement looms overhead as the forest has been declared a sanctuary. Intra-tribal land transfers have taken place in Paniganda, Ankulpur and Adava. This situation is no different in the Non-scheduled Area. Land grabbing or land alienation by non-tribals has been experienced in three out of five villages (Jabua, Baunsapal and Daruthenga). There is no land alienation in two villages (Godimagura and Bhatlaida).

XVI. PESA on Management of village markets

Section 4(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:

(iv) The power to manage village markets by whatever name called.

The Panchayats at the appropriate level and the Gram Sabha are to manage village markets [Sec.4 (m)(iv)]. The Gram Panchayat with mandatory approval of the Gram Sabha in Maharashtra and the Gram Panchayat with the control and supervision of the Gram Sabha in Odisha are empowered to manage the markets. However, the Gram Panchayat was seen to be in control of regulating the market with hardly any role for the Gram Sabha contrary to the provisions in PESA.

In Maharashtra, there are no markets in four out of the six villages in the

Scheduled Area. In Talegaon Katkariwadi, the market was shut down at the insistence of shop-keepers. There are markets in Vihirgaon and Dhakti-Dahanu. In the former, the Gram Panchayat, along with the official Gram Sabha, manages the market including collection of fees. In the latter, it is the Gram Panchayat which grants permission and manages the market. In all the five case study villages in the Non-scheduled Area, there are no markets.

Whereas in Odisha, there are no markets in five out of the six case study villages in the Scheduled Area. The weekly market of Adava is controlled by the Gram Panchayats, including the auctioning and collection of fees. There is no role for the Gram Sabha, contrary to the law. A similar state of affairs is seen in the case of the five case study villages outside the Scheduled Area. Four of them do not have markets while the Gram Panchayat regulates the market in the fifth village.

XVII. PESA on Control over money-lending

Section 4(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:

(v) The power to exercise control over money-lending to the Scheduled Tribes.

The Panchayats at the appropriate level and the Gram Sabha is to exercise control over money-lending [Sec.4 (m)(v)]. In both the states it is the designated government official under the relevant subject laws who are to issue licence to moneylenders. The Gram Panchayat in consultation with the Gram Sabha has recommendatory powers in both Maharashtra and Odisha. This is not PESA compliant. In reality no regulatory control is exercised over money-lending in violation of existing laws.

Across all the six villages in the Scheduled Areas of Maharashtra, money-lending is not regulated by the Registrar nor does the Gram Panchayat or Gram Sabha have any influence. Money-lending and indebtedness exist in varying degrees in all villages except in Talegaon-Katkariwadi. Clearly there

is rampant violation of the law. It is the same situation in all the five case study villages outside the Scheduled Area where there is no control and regulation of money-lending

In Odisha, all the case-study villages in the Scheduled Area report that there is no control and regulation of money-lending. The vast majority (about 90 per cent) of the families in one village, Paniganda, are indebted. Neither the licensing authority, the Sub-Registrar, nor the Gram Panchayat fulfils their role as per the provisions of the law. The law is being completely ignored.

XVIII. PESA on Control over institutions and functionaries in social sectors

Section 4.(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:

(vi) The power to exercise control over institutions and functionaries in all social sectors.

The Panchayats at the appropriate level and the Gram Sabha are to exercise control over institutions and functionaries in social sectors [Sec.4 (m)(vi)]. In Maharashtra, the Gram Sabha and the Gram Panchayat in consultation with the Gram Sabha are only to monitor and supervise these institutions and functionaries, and can only make recommendations to the Panchayat Samiti and Zilla Parishad. In Odisha only the Panchayat Samiti is conferred with the powers of control and supervision in consultation with the Gram Sabha. These are not PESA compliant. In practice however, even these provisions are not seen to be practised with largely the concerned departments being involved in the exercise of control over institutions and functionaries. This is also consistent largely with the fact that of the lack of devolutions of subjects and related functionaries to the PRIs under the State Panchayat laws.

In Maharashtra, in three out of the six case-study villages in the Scheduled Area, it is the concerned department that is involved in these tasks. In Yerkad, the Gram Panchayat is involved in supervision while the BDO also has a role.

In Gattaneli, there is a school committee to monitor the school. In Talegaon-Katkariwadi, the Panchayat Samiti is seen to carry out this function whereas in Dhakti-Dahanu, the Deputy Sarpanch keeps a watch on the functionaries. This is not in line with the provisions under the law. In the case study villages in the Non-scheduled Area too, it is, by and large, the concerned departments that carry out the functions of monitoring and supervision. In Kushivli, some of the departments have constituted committees for the purpose but these are not effective. In Ambeghar Katkarwadi-Narliamba Katkariwadi, committees have been constituted by the Gram Sabha which carries out the supervision. The vigilance committee constituted in the Brahmangaon Adivasi pada is not functional.

In Odisha, no case study villages in the Scheduled Area reported of the Panchayat Samiti ever having consulted the Gram Sabha regarding the control and supervision of functionaries in social sector. Four villages reported that this function seemed to have been carried out by the concerned departments. In one village, the Gram Panchayat and the concerned departments exercised some element of control whereas in another village, it was a combination of village committees created by the government departments and concerned officials that exercised this function. Clearly this provision in law was not being followed. In the case study villages in the Non-scheduled Area, the primary role of supervision was carried out by the concerned department or the committees constituted by the departments. Bhatlaida village reported the constitution of various committees under different schemes to carry out the function of supervision. The monitoring committees in Baunsapal did not consult the Gram Sabha.

XIX. PESA on Control over local plans and resources

Section 4(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:

(vii) The power to control over local plans and resources or such plans including tribal sub-plans.

The Panchayats at the appropriate level and the Gram Sabha are to exercise control over local plans and resources, including Tribal Sub-Plans [Sec.4 (m) (vii)]. In Maharashtra, the Gram Sabha has provisions to approve plans, programmes and projects that the Gram Panchayat are to implement and the decision of the Gram Sabha is binding. In Odisha the power to prepare the Tribal Sub-Plan and local plans is vested in the Panchayat Samiti, and those of agriculture and poverty alleviation is vested in the Gram Panchayat with no effective role for Gram Sabha. Therefore, the Maharashtra laws are partially PESA compliant while that of Odisha is in violation. However, in Maharashtra it is largely the Gram Panchayat which approves the plans with Gram Sabha approval in some cases. In Odisha, contrary to the State laws, neither the Gram Sabha nor the Gram Panchayat exerted any significant influence on plans. This is also consistent with the fact of lesser devolution of functions in Odisha as compared to Maharashtra.

In Maharashtra, four out of the six case study villages in the Scheduled Area reported that it was the Gram Panchayat that made the plans for which, except in one village, the approval of the Gram Sabha was obtained. In two other villages (both in the rural area), the Gram Sevak and the Sarpanch made the plans and no approval was obtained from the Gram Sabha, but instead the plans were approved by the Gram Panchayat.

Whereas in Odisha, in all the case study villages in the Scheduled Area, neither the Gram Sabha nor the Gram Panchayat was seen to exert any role in determining the plans or granting their approval. The government, through its concerned departments, makes the plans. Two villages reported that the VLW and/or the BDO had a role in planning with one case of approval by the Sarpanch and another by the BDO. Only in one village (Ankulpur), the Panchayat Samiti was reported to be preparing the plans with approval from the DRDA and the Zilla Parishad. The role of the Gram Panchayat and the Panchayat Samiti in this function is not evident. In the case study villages in the Non-scheduled Areas, it was evident that it was the Panchayat Samiti that was involved in making the plans or in approving the plans made by the Gram Panchayat. In two villages, the District Rural Development Agency and/or the Zilla Parishad had a role in approving the plans. In two instances, the approval of the BDO was also obtained.

XX. PESA on Non-assumption of powers and authority by higher panchayats

Section 4(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 the Gram Sabha.

Non-assumption of powers and authority by higher panchayats [Sec.4 (n)] is prescribed in PESA. Neither Maharashtra nor Odisha have any provision in the State laws. This is non-compliant with PESA. As a result, whatever little powers the Gram Sabha has is assumed by the higher Panchayat structures and the government departments.

In Maharashtra, the case study shows that Gram Sabha is not empowered adequately due to non-compliance with PESA in most cases, and partial compliance in a few cases which are further compounded with weak provisions in the state laws, and/or contradictory provisions in the subject laws. Further, even the existing provisions are violated by acts of omission and commission as seen above. Whereas in Odisha, The Gram Sabha is not empowered adequately due to non-compliance with PESA in most cases, and partial compliance in a few cases, which are further compounded with weak provisions in the state laws and/or contradictory provisions in the subject laws. Further, even the existing provisions are violated by acts of omission and commission as seen above.

XXI. Adoption of Sixth Schedule Pattern

Section 4 (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 level in the Scheduled Areas.

In Maharashtra, no amendment is made to the Zilla Parishads and Panchayat Samitis Act, 1961, for this purpose. The administrative arrangement at the district level follows the existing state Panchayati Raj provisions with certain PESA provisions incorporated into the Panchayati Raj provisions. They are not patterned on the Sixth Schedule.

The PESA provisions are embedded into the existing Panchayati Raj structure and institutions which themselves are not adequately devolved in terms of functions, funds and functionaries, resulting in the government departments exerting considerable, if not dominant power, contrary to the objectives of decentralisation.

Even in Odisha, no amendment has been made to the Orissa Zilla Parishad Act, 1991 for this purpose. The administrative arrangement at the district level follows the existing state Panchayati Raj provisions with certain PESA provisions incorporated into the Panchayati Raj provisions. They are not patterned on the Sixth Schedule.

Therefore, both the States are not in compliance with PESA in this respect. The Sixth Schedule pattern essentially provides more autonomy and wider powers for the structure at the District level.

7. Conclusion and Recommendations

PESA Act of 1996 seeks to empower the Gram Sabha as the core institution of governance in the Scheduled Areas. The Act itself is intended to extend panchayati raj into the Scheduled Areas by its incorporation in the state panchayat laws as envisioned in the Fifth Schedule of the Constitution under Article 244, for facilitating peace and good governance in the Scheduled Area. While the panchayat system has been in formal existence in many states in the country for a long time, it was through the 73rd Amendment to the Constitution that a common frame was introduced, making it mandatory for all the states to adopt the new law within a year of its enactment. All the states were legally required to adopt this frame by enacting suitable state laws or modifying the existing state panchayat laws wherever they were in existence. Both Maharashtra (since 1958) and Odisha (since 1948) have a long history of the panchayat system. As many as 29 subjects, which fall within the purview of the state, were to be subject matters to be governed by the PRIs. However, in Maharashtra, only 11 subjects were devolved to the PRIs though schemes under 18 subjects were to be implemented by the PRIs. In Odisha, 21 subjects were devolved to the PRIs. The Maharashtra law has stronger provisions with regard to the potential control over the plans and programmes, and the functionaries, by the PRIs, including the Gram Sabha, as compared to Odisha,

where the PRIs have had a cursory role in calling forth information and in the nature of supervision of the government functionaries. This difference in the status and role of PRIs, including of the Gram Sabha, is manifested in the villages, to a significant extent. Maharashtra has seen more vibrant and active PRIs, including its Gram Sabhas, as compared to Odisha, where the government departments play a dominant role. This general predisposition in local governance is also carried over to the Scheduled Area. The panchayat systems in operation in both the states have been observed to be deficient in that the PRIs do not fully manifest exercise their legal powers as provided under the law. Therefore, one of the most important factors determining the success of PRIs is the optimisation of the full potential of the existing Panchayat laws, despite their weaknesses observed earlier with regard to compliance with the 73rd Amendment. The question, therefore, is whether PESA, which expresses itself through the state Panchayat laws and subject laws, marks a significant departure in terms of governance in the Scheduled Areas.

In the light of the above incidences of non-compliance with and even violation of PESA stipulations, the following recommendations may be made to ensure better compliance of PESA provisions in future in both the states:

1. Amendment to PESA to bring better clarity through expanding the section on definitions, removal of ambiguities (such as Gram Sabha or Panchayats at appropriate level, consultation etc) conferring powers to the union government to make Rules under the Act and introduction of the provision for grievance redressal for decisions made by the Gram Sabha, etc.
2. Amendments to be introduced by the union government to make the Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, and the Indian Registration Act, and national policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, and Wildlife Conservation Strategy, 2002 PESA compliant.
3. Formulating the structure and provisions for the Sixth Schedule pattern to be adopted in the Scheduled Area.
4. Enact the much delayed Provisions of the Municipalities (Extension to

the Scheduled Areas) Act, resolve the current vacuum created due to the absence of such a legislation and consequent illegality in application of the Municipal or Nagarpalika Act to any part of Scheduled Area that are upgraded as a municipality till date and ensure that all upgradation of panchayats to municipalities in the Scheduled Area be stopped until these issues are resolved.

5. Use the provision to issue notifications under Para 5(1) of the Fifth Schedule to ensure harmonisation of state laws with PESA as well as its proper implementation;
6. Ensure that the Governors annual report to the President of India is regular and contains update on the implementation of PESA.
7. Link allocation of Tribal Sub-Plan fund to harmonisation of state laws including subject laws with PESA as well as its implantation and also incentivize the same.
8. Bring suitable enactment to Article 243 as initiated by the Ministry of Panchayati Raj to empower Gram Sabha in Non-scheduled Area as well as creating Schedule 13 with a subject list for Gram/Ward Sabha.
9. Entrust the Ministry of Tribal Affairs and/or the National Commission for Scheduled Tribes with monitoring of the harmonisation of state laws with PESA and their implementation.
10. Initiate a process of identifying villages as defined in PESA and its geographical jurisdiction through the Gram Panchayats, the State Election Commission, the concerned Sub-Divisional Magistrate and self-declaration by villages in a time-bound manner; this is to be followed with delimiting the area into suitable administrative units.

Endnotes

1. Panchayat Raj Extension to Scheduled Areas
2. This paper is extracted from the research study conducted at Indian Institute of Dalit Studies under the International NGO Partnership Agreement Programme of Christian Aid. The authors would like to thank Indian Institute of Dalit Studies, New Delhi and Christian Aid for supporting this study. We are grateful to Professor R.P. Mangain for providing all possible support required for the work and to Professor S.K. Thorat for his critical inputs and suggestion to review the state laws in the light of PESA Act before going to the field for investigation.

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3. In black and white, but... Down To Earth, 14 October 1996 available at <http://www.indiaenvironmentportal.org.in/feature-article/black-and-white>
4. Available at <http://tribal.nic.in/writereaddata/linkimages/pesa6636533023.pdf>
5. Ministry of Panchayati Raj. Chapter 7, Reviewing the Implementation of PESA in States with Schedule V areas, Report of the Working Group on Democratic Decentralisation & PRIs, Planning Commission, , November 2006.
6. D.O. No.N-11012//3/2010-PESA, Amendment to the Panchayats (Extension to Scheduled Areas) Act, 1996, Ministry of Panchayat Raj, Government of India, 31st March 2010.
7. The Seventh Report of the Second Administrative Reforms Commission, 'Capacity Building for Conflict Resolution: Friction to Fusion,' February 2008, p.105 and 210 Available at http://arc.gov.in/arc_7th_report/ARC_7thReport_con_sum_rec.pdf
8. Report of the Expert group constituted by the Planning Commission on Development Challenges in Extremist Affected Areas, 2008, p.80 available at http://planningcommission.gov.in/reports/publications/rep_dce.pdf
9. Available at <http://arc.gov.in/6-1.pdf>

10. The Sixth Report, Second Administrative Reforms Commission, Local Governance: An Inspiring Journey into the Future, October 2007, p.193-4 available at <http://arc.gov.in/6-2.pdf>
11. Available at http://panchayat.gov.in/mopr/data/1306908789084-MFP_%20Final%20Report.pdf
12. Available at <http://panchayat.gov.in/mopr/viewMore.do?method=viewMoreContent&ptltid=4036&cToken=938785950>
13. Available at <http://www.downtoearth.org.in/dte/userfiles/images/bdsharma-guidelines.pdf>
14. Available at <http://www.downtoearth.org.in/dte/userfiles/images/bdsharma-guidelines.pdf>
15. Faster, Sustainable and More Inclusive Growth. An Approach to the Twelfth Five Year Plan, Planning Commission, Government of India, October 2011, p.66.
16. For instance, The 7th Report of the Second Administrative Reforms Commission 'Capacity Building for Conflict Resolution', February 2008; Report of the Working Group on Democratic Decentralisation & PRIs, Planning Commission and Ministry of Panchayati Raj, November 2006 available at http://planningcommission.gov.in/aboutus/committee/wrkgrp11/wg1_demo.pdf; Planning at the Grassroots Level. An Action Programme for the Eleventh Five Year Plan. Report of the Expert Group, March 2006, New Delhi available at http://planningcommission.nic.in/plans/stateplan/sp_scy2stat.pdf
17. For instance, The Land Revenue Code was amended to empower Gram Sabha to prevent unlawful alienation of land and restoration of unlawfully alienated lands; The Gram Sabha and Panchayats were authorised to grant mining leases of specified minor minerals up to annual letting vale of Rs ten lakhs; The State Excise Act was amended empowering Gram Sabha to regulate all aspects of excise including enforcement of prohibition if it so decided; Comprehensive rules were made in 2000 in respect of 'consultation' with Gram Sabha before starting proceedings of land acquisition.
18. See 7.10 Recommendations of The Standing Committee on Inter Sectoral Issues relating to Tribal Development, Op. Cit.
19. Ministry of Panchayati Raj, (31st March, 2010) Op. Cit.
20. For instance see Displacement: Key Trends, Inclusive Media For Change, <http://www.im4change.org/empowerment/displacement-3279/print>
Menon, Ajit. Engaging with Law on Adivasi Rights, Economic and Political Weekly, vol.XLII, No. 4 June 16, 2007.

21. Planning Commission, Government of India. *Faster, Sustainable and More Inclusive Growth. An Approach to the Twelfth Five Year Plan*, October 2011, p.50 available at http://planningcommission.nic.in/plans/planrel/12appdrft/approach_12plan.pdf
22. Ministry of Panchayati Raj, Government of India. No.N-39011/52/2009-PEAIS/Pol.II, Panchayat Empowerment & Accountability Incentive Scheme (PEAIS) Assessment of the States for 2010-11 available at <http://panchayat.gov.in/mopr/data/1308546367561~New%20Press%20note.pdf>
23. Implemented since 2005-06 by Ministry of Panchayat Raj
24. This figure is arrived at after combining the figures for north-eastern states with the rest. Originally they were listed separately in PEAIS.
25. D.O. No.M-11011//3/2009-P&C(A R) of Ministry of Panchayati Raj, Government of India on Amendments to Article 243 of the Constitution for Strengthening the Local Bodies, dated 17 March, 2010 available at <http://panchayat.gov.in/mopr/viewContentItem.do?method=viewItem&itemid=5069&ptltid=3947&cToken=-971540882&folderid=3956>
26. MoPR 2010) Amendments to Article 243 of the Constitution for Strengthening the Local Bodies. Op. Cit.
27. It is a body of Panchayat Raj, equivalent to Gram Sabha and it was established through Orissa Gram Panchayat Act, 1964 Proviso 4. Source: <http://www.orissa.gov.in/panchayat/Orissa%20Gram%20Panchayat%20Act%201964.pdf> accessed on 20th March, 2014.
28. This term we used in this study for Gram Sasan. Since the term Gram Sabha does not exist in Odisha, we decided to use Gram Panchayat Gram Sabha in place of Gram Sasan.
29. The Maharashtra [Municipal Councils] [Nagar Panchayats and Industrial Townships] Act, 1965, Clause (A) states "Backward Class of citizens" means such classes or parts of or groups within such classes as are declared, from time to time, by the State Government to be Other Backward Classes and Vimukta Jatis and Nomadic Tribes.
30. The project, Kalu Dam, was subsequently stayed by the High Court as it did not obtain the mandatory clearance from the Ministry of Environment and Forests. See Plumbe, Mustafa. "HC Orders State to Stop Work on Kalu Dam", DNA. 2 March 2012; Available at: http://www.dnaindia.com/mumbai/report_hc-orders-state-to-stop-work-on-kalu-dam_1657299 accessed on 19 Oct, 2012.)
31. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

References

- Bijoy, C.R. (1999), "Adivasis Betrayed: Adivasi Land Rights in Kerala", *Economic and Political Weekly*, Vol. XXXIV, No. 22, 29 May– 4 June, pp. 1329– 35.
- Bijoy, C.R., Shankar Gopalakrishnan and Shomona Khanna (2010), *India and the Rights of Indigenous Peoples: Constitutional, Legislative and Administrative Provisions Concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples, Asia Indigenous Peoples Pact (AIPP), Thailand and International Labour Organisation, Geneva*, p. 18.
- Bose, N.K. (ed.) (1957), *Selection from Gandhi*, Navjivan Publishing House, Ahmedabad.
- Dandekar, Ajay and Chitrangada Choudhury (2010), "PESA, Left-wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts", *Institute of Rural Management, Anand, Commissioned by Ministry of Panchayati Raj, Government of India, New Delhi*, p. 5.
- Down To Earth (1996), "In Black and White, but...", 14 October, Available at: <http://www.indiaenvironmentportal.org.in/feature-article/black-and-white>, accessed on 18 Oct, 2012.
- Gandhi, M.K. (1942), "My Idea of Village Swaraj", *Harijan*, 26 July.
- Ghosh, B. (2000), "Panchayati Raj—Evolution and Concept", *Occasional Paper No. 25, Institute of Social Sciences (ISS), New Delhi*.
- Government of Odisha (2010-11), "ST and SC Development", *Annual Report, 2010-11, Minorities and Backward Class Welfare Department, Bhubaneswar*, Available at: http://218.248.11.68/STSC/pdf/STSC_AnnualReport_201011.pdf, accessed on 18 Oct, 2012.
- Inclusive Media for Change, "Displacement: Key Trends", Available at: <http://www.im4change.org/empowerment/displacement-3279/print>, accessed on 18 Oct, 2012.
- Malviya, H.D. (1956), *Village Panchayats in India*, *Economic and Political Research Department, All India Congress Committee, Delhi*, p. 258.
- Mathew, George (ed.) (1995), *Status of Panchayati Raj in the States of India*, *Institute of Social Sciences (ISS), New Delhi*, p. 3.
- Menon, Ajit (2007), "Engaging with Law on Adivasi Rights", *Economic and Political Weekly*, Vol. XLII, No. 4, 16 June.

Metcalfe, Charles (1978), Report of the Select Committee of House of Commons, Vol. III, in P. Shara, Modern Public Administration, Meenakshi Prakashan, New Delhi, p. 305.

Ministry of Drinking Water and Sanitation “National Rural Drinking Water Programmes. State-wise LWE District”, Government of India, New Delhi, Available at: http://indiawater.gov.in/imisreports/Reports/BasicInformation/rpt_RWS_StatewiseLWEDistrict_S.aspx?Rep=0, accessed on 18 Oct, 2012.

Ministry of Panchayati Raj (MoPR) (2006), “Reviewing the Implementation of PESA in States with Schedule V Areas”, Chapter 7, Report of the Working Group on Democratic Decentralisation and PRIs, Planning Commission, New Delhi, November.

——— (2010a), “Amendments to Article 243 of the Constitution for Strengthening the Local Bodies”, D.O. No.M-11011//3/2009-P&C(AR), Government of India, New Delhi, 17 March, Available at: <http://panchayat.gov.in/mopr/viewContentItem.do?method=viewItem&itemid=5069&ptltid=3947&cToken=-971540882&folderid=3956>, accessed on 18 Oct, 2012.

——— (2010b), Government of India, Revised Note on “Decentralised Governance in the North Eastern States (NE)”, Government of India, 19 March, Available at: <http://panchayat.gov.in/mopr/viewPortalPage.do?cToken=-971540882>, accessed on 18 Oct, 2012.

——— (2010c), “Amendment to the Panchayats (Extension to Scheduled Areas) Act, 1996”, D.O. No.N-11012//3/2010-PESA, Government of India, New Delhi, 31 March.

——— (2011a), Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, Government of India, New Delhi, May, Available at: http://panchayat.gov.in/mopr/data/1306908789084-MFP_%20Final%20Report.pdf, accessed on 18 Oct, 2012.

——— (2011b), Roadmap for the Panchayati Raj (2011-17): An All India Perspective, Government of India, New Delhi, pp. 7-12, Available at: <http://www.indiaenvironmentportal.org.in/files/panchayat%20Roadmap.pdf>, accessed on 20 Oct, 2012.

——— Raghav Chandra Report on “Land Alienation, Displacement, Rehabilitation and Resettlement”, Available at: <http://panchayat.gov.in/mopr/viewMore.do?method=viewMoreContent&ptltid=4036&cToken=938785950>, accessed on 25th Oct, 2012.

- Model Guidelines to Vest Gram Sabhas with Powers as Envisaged in PESA, Report of the Sub-committee Headed by Dr. B.D. Sharma, Government of India, New Delhi, Available at: <http://www.downtoearth.org.in/dte/userfiles/images/bdsharma-guidelines.pdf>, accessed on 18 Oct, 2012.
- Ministry of Panchayati Raj “Panchayat Empowerment and Accountability Incentive Scheme (PEAIS)-Assessment of the States for 2010-11”, No. N-39011/52/2009-PEAIS/Pol.II, Government of India, New Delhi, Available at:
- <http://panchayat.gov.in/mopr/data/1308546367561~New%20Press%20note.pdf>, accessed on 18 Oct, 2012.
- Ministry of Tribal Affairs (2005-06), Annual Report, Government of India, New Delhi, Available at: <http://tribal.gov.in/writereaddata/mainlinkFile/File784.pdf>, accessed on 18 Oct, 2012.
- (2008-09), Annual Report, Government of India, New Delhi, Available at: <http://tribal.gov.in/writereaddata/mainlinkFile/File784.pdf>, accessed on 18 Oct, 2012.
- Mukerji, Radhakumud (1958), Local Government in Ancient India, Motilal Banarsidas, Delhi, 1958, pp. 2-3
- Mungekar Committee (2009), Raising Standards of Administration in Tribal Areas, Third Report of the Standing Committee on Inter-Sectoral Issues Relating to Tribal Development headed by Dr. Bhalchandra Mungekar, Member, Planning Commission, with Secretaries of Some Key Ministries Concerned with Tribal Development as its members.
- Mustafa, Plumbe (2012), “HC Orders State to Stop Work on Kalu Dam”, DNA, 2 March, Available at: http://www.dnaindia.com/mumbai/report_hc-orders-state-to-stop-work-on-kalu-dam_1657299, accessed on 18 Oct, 2012.
- Nehru, Jawaharlal (1964), The Discovery of India, Signet Press, Calcutta, p. 288.
- Planning Commission (2006), “Planning at the Grassroots Level. An Action Programme for the Eleventh Five-Year Plan”, Report of the Expert Group, Government of India, New Delhi, March, Available at: http://planningcommission.nic.in/plans/stateplan/sp_scy2stat.pdf, accessed on 19 Oct, 2012.
- (2008), Report of the Expert Group on “Development Challenges in Extremist Affected Areas”, p.80; Available at: http://planningcommission.gov.in/reports/publications/rep_dce.pdf, accessed on 25 Oct, 2012.

- (2011), “Faster, Sustainable and More Inclusive Growth. An Approach to the Twelfth Five Year Plan”, Government of India, New Delhi, October, Available at: http://planningcommission.nic.in/plans/planrel/12appdrft/approach_12plan.pdf, accessed on 18 Oct, 2012.
- Planning Commission and Ministry of Panchayati Raj (2006), “Report of the Working Group on Democratic Decentralisation and PRIs”, Government of India, New Delhi, November, Available at: http://planningcommission.gov.in/aboutus/committee/wrkgrp11/wgl1_demo.pdf, accessed on 18 Oct, 2012.
- Rajput, R.S. and D.R. Meghe (eds.) (1984), Panchayat Raj in India: Democracy at Grassroots, Deepa and Deep Publications, New Delhi, p. 29.
- Second Administrative Reforms Commission (2007), “Local Governance: An Inspiring Journey into the Future”, Sixth Report, October, pp. 193-94, Available at: <http://arc.gov.in/6-2.pdf>, accessed on 19 Oct, 2012.
- (2008), “Capacity Building for Conflict Resolution: Friction to Fusion”, Seventh Report, February, pp. 105, 210, Available at: http://arc.gov.in/arc_7th_report/ARC_7thReport_con_sum_rec.pdf, accessed on 18 Oct, 2012.
- Shara, P. (1978), Modern Public Administration, Meenakshi Prakashan, New Delhi, p. 305.
- Singh, Sitha Ram (1985), “Panchayati Raj for Faster Rural Uplift”, Yojana, 15 December, p. 21.
- Status of Panchayati Raj, State Profile—Maharashtra, Available at: <http://panchayat.gov.in/mopr/viewContentItem>.

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