

**BY
ABVK-
TEER**



**EFFECTIVENESS
OF GRAM SABHA
IN PESA**

**SUBMITTED TO
MINISTRY OF
TRIBAL
AFFAIRS**



Acknowledgements

We at the Akhil Bharatiya Vanvasi Kalyan Ashram are thankful to the Ministry of Tribal Affairs for providing us this opportunity to conduct a research in the ground reality of implementation of PESA.

It is vital that Gram Sabha as an institution of ancient Indian origin and as the basis of our vibrant democracy emerges a strong source of synergy in the Amrit Kaal of our country. Hence this research is focussed not on other aspects, but specifically on the institution of Gram Sabha as expected and envisioned in PESA.

We are grateful to our professional research team located at TEER (Tribal Ethos & Economics Research) Foundation and we are also grateful to the tribal youth who participated in this research as voluntary field investigators.

Yours truly,

Girish Kuber

All India coordinator, Tribal Rights protection wing
Akhil Bharatiya Vanvasi Kalyan Ashram

Milind Thatte

Principal Investigator, Research

Director, TEER (Tribal Ethos & Economics Research)



Effectiveness of PESA Gram Sabha

Submitted to: Ministry of Tribal Affairs, Government of Bharat

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List of Abbreviations / Glossary

Acronym	Full forms
ABVKA	Akhil Bhartiya Vanvasi Kalyan Ashram
AP	Andhra Pradesh
APWLT	Andhra Pradesh Water, Land, Trees Act
BDO	Block Development Officer
CEO	Chief Executive Officer
CFR	Community Forest Rights
CFRMC	Community Forest Resource Management Committee constituted by a Gramsabha as per Rule 4(1)(e) and (f) of FRA
CFRMP	Community Forest Resources Management Plan
CFRR	Community Forest Resource Rights as per sec. 3(1)(i) of the Forest Rights Act
CG	Chhattisgarh
CM	Chief Minister
CSO	Civil Society Organisation or mass-based organisation
DFO	Division Forest Officer
Dist.	District
DM	District Magistrate
FD	Forest Department
FGD	Focus Group Discussion
FRA	The Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act 2006
GJ	Gujarat
GOI	Government of India
GP	Gram Panchayat
GPDP	Gram Panchayat Development Plans
GR	Government Resolution
GS	Gram Sabha
HG	Hon'ble Governor
HP	Himachal Pradesh
HR	Human Resources
IAS	Indian Administrative Services
IEC	Information, Education, and Communication
IFA	Indian Forest Act
IFR	Individual Forest Rights
JFMC	Joint Forest Management Committee
JH	Jharkhand
LAC	Land Advisory Council
MFP	Minor Forest Produce or non-timber plant-based forest produce
MGP Act	Maharashtra Gram Panchayat Act 1959
MH	Maharashtra
MLRC	Maharashtra Land Revenue Code
MMC	Mohla-Manpur-Chowki
MOEFCC	Ministry of Environment Forests and Climate Change
MOTA	Ministry of Tribal Affairs
MP	Madhya Pradesh
MPSAGS	Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998

NGO	Non-Governmental Organisation
NRMC	Natural Resources Management Committee constituted under PESA rules
OD	Odisha
OTFD	Other Traditional Forest Dwellers
PESA	Provisions of Panchayats Extension to Scheduled Areas Act 1996
PRI	Panchayat Raj Institution
PS	Panchayat Samiti
PVTG	Particularly Vulnerable Tribal Groups
RDD	Rural Development Department
RFA	Recorded Forest Area
RFCTLARR	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
RGSA	Rashtriya Gram Swaraj Abhiyan
RJ	Rajasthan
ROR	Record of Rights
RPMC	Resource Planning and Management Committee
S.T.	Scheduled Tribe
SC	Supreme Court
SDM/SDO	Sub Divisional Magistrate / Sub Divisional Officer
SHG	Self Help Group
SIRD	State Institute of Rural Development
TAD	Tribal Area Development department
TCM	Talathi cum Mantri
TDD	Tribal Development department
TP	Transit Permit (issued for forest produce)
TS	Telangana
TSP	Tribal Sub Plan
UC	Utilisation Certificate
VDO	Village Development Officer
VFPMC	Village Forest Project Management Committee
VFR	Village Forest Rules
ZP	Zilla Panchayat or Zilla Parishad

PART 1:

Introduction and Background

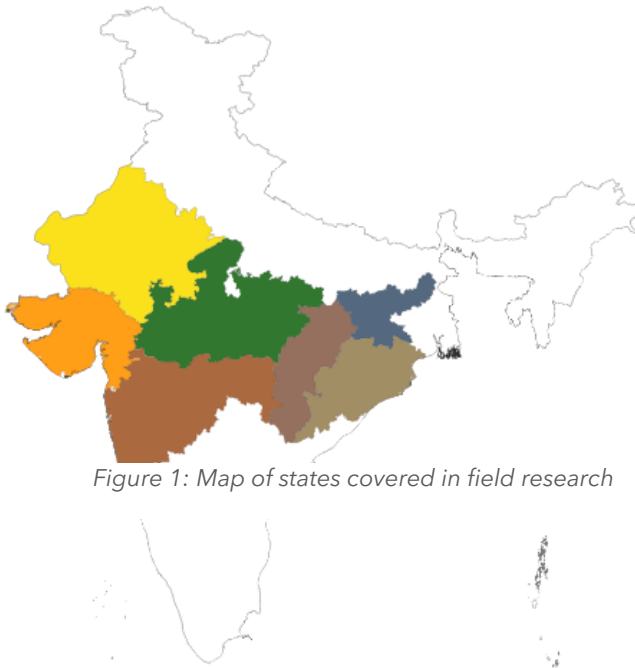


Figure 1: Map of states covered in field research

1 Objective and scope of the research

Central research question: Whether PESA and the unique institution of Gram Sabha has been used effectively.

Scope: Desk research of legal provisions of all ten Fifth Schedule states and Field research of seven states to assess effectiveness of Gram Sabha as envisioned in PESA

2 Background

The 73rd Amendment in 1992 and the PESA (Panchayat Extension to Scheduled Areas) in 1996 were two landmark statutes that made our country turn towards decentralized governance. While village government has a pretty long history in India, the contemporary systems are highly centralized. Hence it was and still is challenging to implement Panchayat Raj in its true spirit. Local government is a state subject and both statutes mentioned above are guiding in nature. Article 243M clearly states that the 73rd amendment shall not apply to Scheduled Areas unless the legislature passes a law for that purpose. This brought PESA in the Parliament and subsequently the states passed their Panchayat Raj Acts and made some amendments for applying the same to Scheduled Areas. Some states have also issued separate PESA rules; viz. Andhra Pradesh, Himachal Pradesh, and Rajasthan in 2011, Maharashtra in 2014, and Gujarat in 2017. The fact that it took the states 15+ years to pass such rules indicates that there is a problem.

2.1 Why the fourth tier of Panchayat?

Other areas (i.e. non-scheduled areas) have three tiers of local government or Panchayat Raj institutions; viz. Zilla (District), Tehsil (intermediary level), and Gram Panchayats. PESA extends self-rule and introduces a fourth tier. PESA defines a habitation or hamlet as a village and it considers this village as the basic unit of self-rule and governance. Gram Sabha of such village is the fourth tier of Panchayat Raj.

Gram Panchayat in tribal areas is often formed of many villages that are socially and geographically distant. Gram Panchayat (GP) has huge limitations when rendering self-government in such scenario. Usually, the smaller hamlets or the remote ones remain deprived of development funds (and opportunities) that hardly percolate below the GP.

Gram Sabha and its empowerment hence become crucial in defining whether and how has our democracy reached the last man. “Antyodaya” as defined in the Gandhian ethos is the rise of the last man in the last row. Our citizens in the remote tribal hamlet must get their rightful place in democracy - such is the Antyodaya that PESA has the potential to bring.

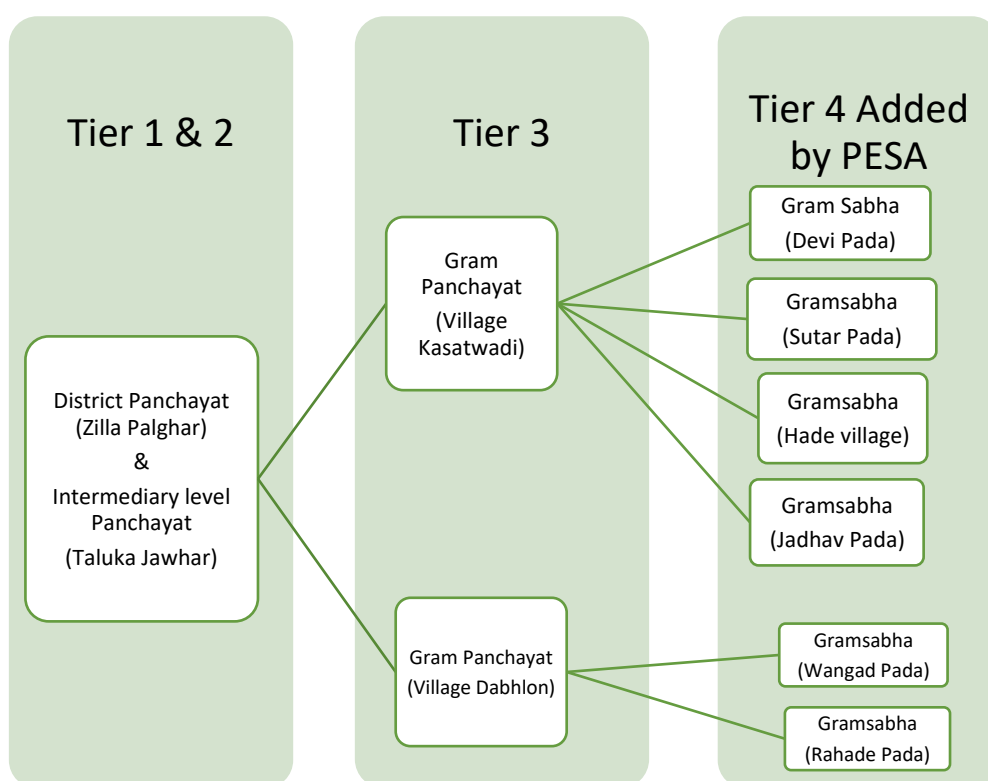


Figure 2: Illustrative example of the fourth tier of Panchayat Raj

2.2 Quotes from Bhuria Committee report

The Committee of Members of Parliament and Experts constituted to make Recommendations on Law concerning Extension of Provisions of the Constitution (Seventy Third Amendment) Act, 1992 to Scheduled Areas - famously known as the Bhuria committee - after its chairman Shri Dileep Singh Bhuria submitted its report in January 1995.

In its proposal for legislation, the committee says:

“...The scheme should pre-eminently be related to participative democracy, particularly at the grass-root tiers. Autonomy for institutions... should bear a living relationship with the self-management practices which have been in vogue in tribal areas. (para 21.i)

“The primary unit we contemplate may be a Gram Sabha for a hamlet, or a group of hamlets or a village, as the case may be, in a tribal area. It comprises a face-to-face community managing its affairs in accordance with well-established traditions and customs. The customary codes and procedures should not be disturbed. A hamlet/village comprising a community in a tribal area must be distinguished from a revenue village which is more of an administrative entity. It should be clearly understood that in tribal areas hamlets are more common than big villages...

“The Gram Sabha may nominate its executive council, which may be a traditional body. In any event, the wholesome influence, wisdom, and experience of the older generation should not be discounted, particularly since the reins of affairs have been... in their hands.” (para 22, p.9)

The committee members essentially believed and put forth that the new institutions when extending Panchayat Raj to the Scheduled and tribal areas, must be based on and in harmony with traditional units of self-government. The committee mentions as important issues raised by members:

“At the grass-root, we should think of an entity which has had, in tribal history, live organic functioning. Rough and hilly topography and thinly populated scattered villages characterise tribal areas. A Gram Sabha represents such an entity at village or hamlet level. Over and above it, a group of villages or hamlets variously called ‘Parganas’ or ‘Anchal’ or ‘Parha’ are found. In the greater part of Central India, the two have been live homogenous units/ conglomerates of socio-political administration. Such administrative arrangements enabled the tribal communities to manage their affairs all through the ages. The traditional organisational set-up based, inter-alia, on physiography, topography etc. should be taken as the basis for a build-up under consideration.” (para 8.b p.4)



Noteworthy is that the committee did not recommend population as a criteria for forming an institution, rather emphasised on the willingness and traditional habit of a community to be together for self-government.

The committee in this report also mentions certain characteristics of traditional tribal self-government. While recognising that “many tribal communities are face-to-face communities”, the committee says, “the procedures, practices, norms” of regulating their socio-politico-legal affairs have evolved as a result of “indigenous growth” over centuries. For instance, “decision making... has been through consensus rather than by count of votes.”

The committee opined that some formal structures introduced in tribal areas of “cooperatives did not have much chance of a success due to their formal structure, rigid procedures and certain underlying assumptions. The tribal societies have been run on oral traditions and a **general presumption of trust in each other.**” (emphasis added) (para 34 p.12)

The committee hence recommended, “Traditional systems of the Gram Sabha should be accepted. In other words, nothing should be imposed from above... that runs counter to the established traditional order, customs etc.” (para 7(8) p.4)

The committee specifically mentioned that “flow of adequate funds should be ensured” to the Gram Sabha, in order to enable it attain its objectives; viz. 1) cognizance of traditions of equalitarian democratic institutions, 2) respecting time-honoured customary usages, 3) effective self-government for removal of poverty, illiteracy etc.



3 Status of State PESA Rules

State	Rules	Year of notification
1. Andhra Pradesh	Notified	March 2011
2. Chhattisgarh	Notified	August 2022
3. Gujarat	Notified	January 2017
4. Himachal Pradesh	Notified	March 2011
5. Jharkhand		Draft released 26/7/2023
6. Madhya Pradesh	Notified	November 2022*
7. Maharashtra	Notified	March 2014
8. Odisha		Draft released 10/11/2023
9. Rajasthan	Notified	November 2011
10. Telangana	Notified	March 2011 (Same as Andhra)

Table 1 Year of notification of PESA Rules by 10 states.



Part 2: Summary of Findings

This research focussed on the institution of Gram Sabha as envisaged in PESA and whether it has been effective across states. This included field study of seven states; viz. Maharashtra, Madhya Pradesh, Gujarat, Rajasthan, Chhattisgarh, Jharkhand, and Odisha. The other three states; viz. Andhra Pradesh, Telangana, and Himachal Pradesh were studied only through available secondary data.

Following is the summary of findings of this research.

1. Institution Building of Gram Sabha

Gram Sabha is a body with recognition in the Constitution, in the Gram Panchayat Acts, in the PESA Act, and in the relevant subordinate legislations.

Hence it is necessary to examine whether the states have accorded the basic institutional attributes to the Gram Sabha. Any institution in general or a public authority in particular - in order to function must have certain basic attributes like:

- 1) A notified recognition in Gazette or such other records
- 2) Office-bearers viz. President, Secretary etc.
- 3) An office - with space and records
- 4) A recognition in the economy i.e. a bank account and assured income sources
- 5) A territorial boundary with clear jurisdiction
- 6) Functionaries

When comparing the rules of eight states, following points emerge regarding the institutional arrangements they provide for a Gram Sabha.

1.1 Notified recognition to a new Gram Sabha

PESA brings in extension i.e. a new tier of self-government namely the Gram Sabha at village level. PESA defines village as no other law does. It recognises the natural village; where people come together without any external agency giving a notice. It recognises - a community that is customarily managing its affairs - as a village.

Since this village is so far un-recognised, it is a sine qua non to get it notified in a government gazette. When this research team examined the state rules and amendments in Panchayat laws, it was shocking to find that only three states have a clear procedure for recognizing a natural village as a seat of Gram Sabha. The best provision is found in Maharashtra rules.

Maharashtra has this provision in its PESA rules, Rule 4:

4. Declaration of village in the Scheduled Area :— (1) If the people of any habitation or a group of habitation or hamlet or a group of hamlet are of the opinion that their habitation or hamlet, or group of habitation or hamlet would be recorded as a village, they may pass a resolution by a majority of at least half the registered voters in the voting list of that habitation or hamlet or group of habitation or hamlet, as the case may be, to this effect and forward it to the concerned Sub-Divisional Officer, under the intimation of the Collector.

(2) The Sub-Divisional Officer shall enquire into the merits of the resolution within three months. For this purpose, he shall call a meeting of all the registered voters of that habitation or hamlet, or group of habitation or hamlet after giving wide publicity, and conduct an enquiry considering all relevant factors. He shall then submit a report to the Collector with his findings, stating explicitly whether the proposed village conforms to the provisions of the Act:

Provided that, if the Sub-Divisional Officer does not decide on the question within three months from the day of receipt of such resolution, then the Collector shall sue-motto take the cognizance of such resolution and may pass an appropriate order in this regard within 45 days.

(3) An appeal against the decision of the Sub-Divisional Officer rejecting such resolution shall lie with the Collector whose decision shall be final.

(4) The Collector, if satisfied that a new village is to be so notified, shall sent his recommendation to the Divisional Commissioner, for notification of the new village as per Chapter III-A of the Act:

Provided that the decision on a reference from the Sub-Divisional Officer shall be taken by the District Collector within forty-five days from the receipt of such a reference failing which approval shall be deemed to be given.

The time lapse provision as mentioned in the proviso is a very pro-people safeguard ensuring every willing village gets a recognition within a stipulated time frame.

MP PESA Rules 2022 have in rule 3(2) and (3) a clear process for voters to propose constituting a separate Gram Sabha. These rules also provide that in case GP secretary does not forward the resolution/proposal to the SDM, the voters can do it themselves (Rule 3(3)(b)).

Madhya Pradesh (including Chhattisgarh) had framed rules for this purpose; viz. M.P. Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998. Rule 4 provided for constituting a new Gram Sabha. The then Principal Secretary of Panchayat Raj department of Madhya Pradesh told this researcher (in 2021) that this provision has never been put to use. And this is evident from the fact that the number of villages in scheduled areas has never increased since these rules. This provision had built-in self-defeat. It said that the Gram Panchayat or the Gram Sabha or the village people can propose constituting a new Gram Sabha. The GP or the existing Gram Sabha is a power structure in place and it is impossible that they would divide or let go their own power to a fragment. The provision had to be clear and without such self-defeating options. It must exclusively be the right of the people belonging to that habitation or village to demand and constitute a separate Gram Sabha.

Chhattisgarh rules 2022 rule 4 provides for formation of a new village (Gram) rather than Gram Sabha. 4(1) says people can propose so, but 4(2) puts a population restriction. This again defeats the purpose of recognizing the village as defined in PESA. Further, 4(3) says the Governor shall notify such village. This bottlenecks it further, compared to the Maharashtra provision of Divisional Commissioner notifying it. The said rule mentions that the Governor shall do so as per CG Panchayat Raj Adhiniyam 1993 sec. 129B. But the said section does not say when or why the Governor would do so. This means where the process shall begin is not clear only the endpoint is mentioned. Rule 5 gives another process for proposing a separate GS. This has no population restriction apparently. But sub-rule 5 of rule 5 gives discretionary powers to the authorised officer to decide whether to approve the proposal considering: population, distance from GP, and customs of residents. This

does not really assure recognising a GS at the level of traditional village community.

All state rules have copied verbatim the model rules and said that each village shall have a Gram Sabha. But none has paved the way to make it happen.

The recently notified rules of Madhya Pradesh and Chhattisgarh have provisions similar to that of Maharashtra. But there is no time limit for officers to act upon it. Jharkhand had notified rules in 2003 for constituting Gram Sabha and its conduct of business. But it had no implementation precisely because of built-in stoppages like MPSAGS rules 1998. Odisha draft rules (2023) say, “if at any time it appears to the state government that a separate Grama is to be constituted...” (rule 3-1). This defeats the whole definition of village in PESA. It is only the people in a village who can define whether they are a village, it can be neither the state government, nor the Collector.

1.2 Having independent office bearers

‘Checks and balances’ is a foundational principle of our democracy. The Lok Sabha for instance has a chairperson of its own elected by its members. The head of the executive; i.e. the Prime minister - although a member of the House - does not chair the House. The legislature to be independent must have a President who is not a part of the executive i.e. the council of ministers. This principle is accepted in the states as well. The constitution has set this for all the governments in the country.

It is also a part of Bharatiya traditions of democracy that are alive even today in the tribal villages. Whether it is traditional Pradhan in Jharkhand village or Tadvī-Patel in a Gujarat village or Gaon-Burra in an Assam hills village - they act as conveners of village assembly and not as solo decision makers. They act as executors of whatever the village community decides. People used to this tradition find Gram Panchayat out of sync with their beliefs; where Sarpanch becomes a solo decision maker.

It is unfortunate to observe the principle of checks and balances completely violated at the village level. The Gram Sabha i.e. the

legislature¹ of a village is deprived of an independent president in most Fifth Schedule states.

The Gram Panchayat Acts of states define Sarpanch (or Pradhan) as the executive head of the Panchayat. This necessitates that he/she should not head the Sabha; i.e. legislature at village level. The case is different at other levels of Panchayat Raj, because the Zilla Panchayat and Taluka Panchayat have elected representatives belonging to Scheduled Tribes (ST) as presidents and the executive power remains with the administrative officers i.e. CEO and BDO.

It is worth going in detail of how state PESA rules and Panchayat provisions for scheduled areas violate the democratic tenet of checks and balances.

1.2.1 President of Gram Sabha

Rajasthan, Andhra Pradesh, Telangana, and Gujarat unhesitatingly keep Sarpanch as the president of Gram Sabha². Odisha draft rules has imitated the same.

Gujarat PESA rules rule 56 and 57 read:

56. Presiding officer of the meeting (of Gram Sabha) -

(1) The meeting shall be presided over by the Sarpanch or Up-Sarpanch or a member of the Panchayat elected by the members of the Gram Sabha as provided in sub-section (3) of section 93.

(2) When the person authorised to preside over, attends at any time during the course of the meeting, the person so presiding over the meeting shall vacate the chair and the meeting shall continue under the president-ship of the person entitled to preside over as per Sub-rule (1).

(3) When the Presiding Officer is required to go out during the course of the meeting, the meeting shall continue under the president-ship of the person entitled to preside over in accordance with Sub-rule (1).

57. Powers of Presiding Officer:-

(1) The Presiding Officer shall preserve order at the meeting and shall have all the powers necessary for the purpose of enforcing his decision.

¹ The word 'legislature' here is used in the sense of a deliberating decision-making body, not as law-making body.

² Maharashtra recently passed an amendment (2022) to its Gram Panchayat Act making Sarpanch the president of all Gram Sabha meetings in non-scheduled areas. It is not applicable to scheduled areas, but it has certainly created confusion in scheduled areas.

(2) He may disallow the discussion of any motion or proposition which he considers to be beyond the competence of the Gram Sabha and in doing so he shall record his reasons in writing.

(3) He may, at his discretion, allow any question or motion during the meeting.

This is establishing absolute power of Sarpanch without any checks and balances. This autocratic power is further boosted by Rules 62 and 63. Rule 66 is about the powers of Sarpanch to discipline members in the Gram Sabha. It is almost like a school-master; where children shall keep shut whenever the master wants them to.

Gujarat PESA rules thus provide the worst scenario of what could happen if the Sarpanch is not disqualified from being the President of Gram Sabha.

The Jharkhand Panchayat Raj Act, (6 of 2001) has an interesting provision for President of Gram Sabha meeting in scheduled areas; Section 8(iii) reads:

(iii) PRESIDING OVER OF MEETINGS OF GRAM SABHAS IN SCHEDULED AREA - Meeting of Gram Sabha in scheduled area shall be presided over by such a person belonging to any of the Scheduled Tribes of the Gram Sabha who is neither Mukhia, Up-Mukhia nor a member of the Panchayat, and who is recognized as Gram Pradhan in that area as per prevalent custom such as Manjhi, Munda, Pahan, Mahto or by any other name or by the person proposed by them or nominated/supported by the general consensus of the members present in the meeting.

Provided also that in a Gram Sabha in which there is a respected person according to the custom and usage prevalent from traditions who is the Gram Pradhan (Head of the village) e.g. Manjhi, Munda, Pahan, Mahto or called by any other name and is not a member of the Scheduled Tribe, then a meeting of the Gram Sabha in the scheduled areas shall be presided over by him, or if there be any member of the Scheduled Tribe in the said area, then by such person on being proposed by the Gram Pradhan or nominated/supported by a majority of votes of the members present in the meeting, and if there be no members of the Scheduled Tribe then, by a person not belonging to the Scheduled Tribe, who is proposed or nominated / supported in this behalf.

This provision - although separating the powers of Sarpanch and Gram Sabha president - has certain limitations. It denies an ordinary voter/member of Gram Sabha the right to become president of the Gram Sabha in the first place. It is a secondary scenario where the Pradhan may

nominate an ordinary voter to preside. Further, it may be correct to assume that such traditional head post would be not be occupied by a woman.

A better rather truly democratic version of this provision would be to leave it to the people - the voters/members of a Gram Sabha - to choose their president either by consensus or by majority. If the Pradhan is appropriate for this role, the voters will naturally choose him. If not, then why impose a hereditary Pradhan on the voters?

Maharashtra has a meaningful provision ensuring the independence of Sabha from Panchayat:

Rule 9 of Maharashtra PESA rules reads:

(1) After election and in every financial year, the First Gram Sabha shall be held under the Chairpersonship of the Sarpanch. In his absence, Upa-Sarpanch, and in absence of both Sarpanch and Upa-Sarpanch, a Panchayat member of the Scheduled Tribe shall be elected as a Chairperson by the Gram Sabha. No Sarpanch or Upa-Sarpanch or a member of Panchayat shall be eligible to act as Chairperson of the Gram Sabha, except on the occasion mentioned above:

Provided that in villages where the population of Scheduled Tribes is less than ten per cent., a chairperson may be selected from among persons who do not belong to the Scheduled Tribes.

It is categorical and no uncertain in disqualifying the Sarpanch from being the Gram Sabha President except for the annual budget meeting.

Madhya Pradesh (and consequently Chhattisgarh) in their MPSAGS³ Rules 1998 disqualify the Sarpanch from being Gram Sabha president, in Rule 10:

10. Chairperson of meeting of Gram Sabha. - Meeting of Gram Sabha shall be presided by any member of Scheduled Tribe of Gram Sabha not being Sarpanch or Up-Sarpanch or a member of the Gram Panchayat, and shall be elected for this purpose by majority of members present for duration of that meeting.

However, since both the states have never notified any village Gram Sabha using these rules, this nice provision is only a paper tiger.

³ M.P. Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998

MP PESA rules 2022 have continued this provision in Rule 4(2) disqualifying Sarpanch or Up-sarpanch from being GS president. It has also clarified in 4(3) that the President shall continue to be president till voters choose any other person as president in the next meeting and that any voter will be eligible to be president for a maximum of one year at a stretch.

Chhattisgarh PESA rules 2022 have similar provisions of debarring Sarpanch from presiding on Gram Sabha, but also have a rider in rule 7(3) that a candidate defeated in GP election shall not be eligible. This is an unnecessary condition which expresses distrust in openness of democracy. Imagine this scenario: ‘A small hamlet or village, which can have a separate Gram Sabha may have never had any representative in GP- on account of its smaller number of voters. A youth leading such hamlet may attempt contesting a GP election and get defeated.’ How does that become a disqualification from playing another meaningful role in village democracy? It is accepted in the parliament that Public Accounts Committee is chaired by an opposition leader. It is a convention that ensures the committee is independent to keep a watch on the executive. CG PESA rule 7(3) is preventing Gram Sabha from having such independent watchdog role.

The research team observed in field visits that hamlets without any ST household are having a problem in holding Gram Sabha, because CG and MP rules require only an ST voter to be president. Maharashtra rules provide that if ST population is less than 10%, a non-ST voter may preside. Jharkhand 2003 rules also provide that if the traditional head (Munda, Pardhan, Manki) is a non-tribal, he may preside over a Gram Sabha. Other states have not given it a thought at all.

1.2.2 Secretary of Gram Sabha

Rules of Maharashtra, Gujarat, Rajasthan mention that: “The Secretary of Gram Panchayat shall be the Secretary of the Gram Sabha. In a situation where there are more than one Gram Sabhas in a Gram Panchayat, the Secretary of the Gram Panchayat shall be the Secretary of all the Gram Sabhas.”

It is strange that the states with no provisions for constituting more than one Gram Sabhas in a Panchayat also mention having the same secretary for more-than-one Sabhas.

Andhra and Telangana have a strange provision of electing the vice president and secretary of Gram Sabha from scheduled tribes' voters in the village. While the Sarpanch doubles up as Gram Sabha president, the rules do not clarify what powers the vice president may enjoy.

When there are more than one Gram Sabhas in a Panchayat, the secretary of GP may not be able to attend all the Gram Sabha meetings. It makes lot of practical sense to make provisions for an alternate secretary. In our field research we observed Gram Panchayats which had 3 to 5 revenue villages and a larger number of hamlets ~15 to 20 km away from the GP office. The secretary had additional charge of two GPs, which meant he would be secretary to say 15-20 Gram Sabhas in a radius of 20-30 km. Such arrangements make the secretary a bottleneck for non-conduct of GS meetings.

Rajasthan PESA rules provide that the DO of Panchayat Samiti shall nominate other government employees as secretary if the Panchayat secretary is unavailable. This provision is not practical, because the same rules provide that a certain number of voters can demand a special meeting of Gram Sabha which has to be convened urgently. How and who will notify the BDO to allot a secretary for such Gram Sabha meeting?

Maharashtra has a better provision in its Gram Panchayat Act (3 of 1959) in the sections amended (inserted) for scheduled areas. Sec. 54(c) provides that the President of a Gram Sabha may authorise any person available in the Gram Sabha meeting to work as secretary if the Panchayat secretary is absent.

Madhya Pradesh rules have the best provision. Rule 5(3) and (4) says that in absence of the GP secretary, the president of GS shall nominate any available government or semi-government employee as secretary, and in their absence nominate any educated voter to play the role of secretary for that meeting. This truly makes a GS a self-governing body - with independent president and secretary.

1.3 Position and powers of Members

Each institution or body incorporate treats its members with certain dignity and respect and also has certain powers of members recognised. In case of Gram Sabha, the members need two fundamental powers; 1)

power to convene/demand a meeting of Gram Sabha, 2) power to raise an issue, move a motion in the meeting of Gram Sabha.

Gujarat PESA rules provide an excellent example of how NOT to treat the members. These rules look upon members of Gram Sabha i.e. voters in the village almost as enemies of Panchayat who need to be controlled and disciplined by the absolute power of the Panchayat and the Sarpanch.

See what Rule 55 provides:

55. Procedure for motions -

(1) Subject to the provisions of this Rule, any member may move a motion relating to a matter concerning the administration of the Panchayat or the development of the village.

(2) (a) A member who wishes to move a motion shall give a five-day notice of his intention to do so and shall, together with the notice, submit a copy of the motion signed by him and by at least ten members as seconders to the Sarpanch or to the Secretary. The Panchayat, in the meeting held under Rule 53, shall decide on the admissibility of a motion and shall disallow any motion which, in its opinion, is not according to the requirements of Sub-rule (3) to (5) or contravenes the provisions of the Act or the Rules made thereunder, and its decision shall be final. Priority numbers of motions admitted shall be decided by drawing of lots in the Panchayat meeting and a list of such admitted motions with the name of its proposer shall be put up on the notice board of the Panchayat.

(b) The Panchayat may, for reasons to be recorded, allow a motion to be entered in the items of the agenda at a shorter notice.

(3) Every motion shall be clearly and precisely expressed and shall raise one definite issue.

(4) A motion shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of any person except in his official or public capacity.

(5) A motion shall be of an affirmative character.

It is appalling to see how disconnected - the armchair experts and bureaucrats who drafted these rules - were from the realities of a tribal village.

Imagine an illiterate poor tribal woman facing an injustice or is being deprived of opportunity to get benefit of a government scheme - wanting to raise the issue in a Gram Sabha meeting. How will these rules treat her? The rules are expecting a common tribal voter to 'write' his motion

in ‘clearly and precisely expressed’ terms and present it to GP five days in advance. Consider her literacy levels, consider how friendly the GP is to the poorest, and then consider how she will face the ruling elite - whom the rules empower to deny this woman her right to speak.

Rule 55(5) says the motion shall be of an affirmative character. Does the Loksabha or Gujarat Vidhansabha require this from its members? What if the newly constructed roof of Anganwadi is falling off in a village? - are the members of Gram Sabha (also the parents of children in Anganwadi) supposed to speak affirmatively of that falling roof? Will the Sarpanch ever allow such motion in the Gram Sabha? Certainly not, given the rules that ordain him with absolute power of denying voters the right to speak.

MPSAGS Rules 1998 provided the members of Gram Sabha two options of deciding or convening a Gram Sabha meeting in rule 7. MP PESA rules 2022 rule 6(2) and (3) have improvised further. Rule 6(2) makes it further easier reducing the number of voters demanding a special meeting to 25 or 10% (whichever is lesser). The voters do not have to go to GP office or Sarpanch to demand such meeting, but simply go to the GS President who is a voter from the same village/hamlet. It is mandatory for the President to convene a meeting in seven days from the demand received. Voters can also decide all dates of the year for holding GS meetings. Such pre-scheduled meetings shall not require issuance of a notice.

Maharashtra and Rajasthan have similar options of members in a Gram Sabha meeting deciding when and where to have the next meeting. Maharashtra however does not provide for voters’ right to demand a special meeting. Himachal Pradesh PESA rules have no mention of meetings at all. The state in its Panchayat Raj Act (of 1994) says a special meeting can be convened if one-fifth of the voters ask for it. While MP & CG ask 10% members to demand a meeting, Rajasthan brings it to half making it easier for members. Rajasthan PESA rules 2011 provide detailed provisions for special meeting of Gram Sabha. Rule 9 reads:

9. Special meeting of Gram Sabha. - (1) Apart from its regular meetings, in the following circumstances special meetings of the Gram Sabha may be convened:

- (i) if it is so decided in the general meeting of the Gram Sabha,
- (ii) if there is a proposal in the Panchayat which needs to be considered by the Gram Sabha,

(iii) on the basis of the written information given to the Secretary by at least 5 percent of total members of Gram Sabha or 25 members, whichever is more.

(2) Except in situation mentioned in clause (i) of sub-rule (1), the Secretary shall call for a meeting within seven days after consulting the Sarpanch, and public information thereof shall be given in the village 3 days prior to the fixed date through public announcement and other methods: Provided that if the Sarpanch fails to do so, the Secretary shall call a meeting.

Provided further that, in the absence of Secretary or lack of action to hold a meeting within a week, three members from among the people who request in writing to organize a meeting may inform the Sarpanch and organize the meeting by giving notice of at least three days.

(3) The decisions taken in a particular meeting shall not be challenged anywhere else except in the next meeting and the decisions of the Gram Sabha shall be final.

The proviso in sub-rule (2) gives significant power to members to convene a meeting in case of inaction by the officer bearers. There is still a scope for improvisation in Rajasthan rules following the example of MP.

1.4 Office of the Gram Sabha

Each body incorporate has its office and its records. The office indicates the physical existence of an institution. When PESA enables a Gram Sabha to have a separate existence from the Panchayat, it is essential to have an office; i.e. a space and certain records that provide continuity and authenticity of documentation.

States other than MP, Gujarat, and Maharashtra do not mention any office of the Gram Sabha.

Gujarat state PESA rules (rule 5(2)) mentions that each Gram Sabha shall have its own office in the village. But this may not be so in practice because there is no provision to notify more than one Gram Sabha in a Panchayat. The said rules read thus:

(2) The office of the Panchayat shall be the office of the Gram Sabha. If there are more than one Gram Sabha in a Panchayat, each Gram Sabha shall have its own office in village, such as public building, community hall, school or any place where public have easy access, and in case no such place is available, in the house of an ordinary person;

Provided that no rent shall be paid in any form for such office.

(3) The Secretary of the Panchayat shall be responsible for the safe custody of records which may be kept at the Panchayat office.

Sub-rule 3 of rule 5 makes the Gram Sabha office meaningless by declaring that the records may be kept at the Panchayat office. What does an office of Gram Sabha mean without records? Same is the problem with Chhattisgarh (see rule 9).

Maharashtra in rule 6(2) provides for each Gram Sabha to have its own office. (Similar to Gujarat 5(2)) But Maharashtra has gone further by providing a list of records to be kept by the Gram Sabha at the Gram Sabha office. MP rules in rule 3(3)(k) provides that the records of Gram Sabha shall be kept in GS office and a copy shall be kept in GP office.

1.5 Gram Sabha existence in economy

The economy and the government system recognize an individual or an institution by its existence in the banking system. Like all other public authorities, the Gram Sabha must have a bank account.

Maharashtra PESA rules provide for a bank account called Gram Sabha Kosh. This is separate from the Panchayat and Gram Sabha has complete rights of usage over it. Rule 14 reads:

14. Gram Sabha Kosh in the Scheduled Area:— (1) The Gram Sabha shall maintain a Gram Sabha Kosh.

(2) Kosh shall consist of the contribution received in any form including voluntary contributions of cash and goods, and the amount received from minor forest produce, minor minerals, etc., and surcharges imposed on the consumption of the resources and fines levied by the Gram Sabha. It may also include transfers under any devolution scheme, as may be decided by the Government.

(3) The Kosh shall be under the control of Gram Sabha. The Gram Sabha shall have the complete rights of its usage as per resolutions of the Gram Sabha.

(4) The Kosh shall be operated by a Gram Sabha Kosh Committee comprising of the Secretary of Panchayat and another two members nominated with consensus or elected by the Gram Sabha. At least one member out of these two members shall be a woman. All accounts shall be audited and presented before the Gram Sabha for information and final approval.

Government of Maharashtra has consistently transferred 5% of tribal sub-plan funds to the Gram Sabha Kosh accounts of all PESA villages. This has made the account meaningful.

MP PESA rules have elaborate provision for a Gram Sabha Nidhi in rule 13(2). It also provides that two members of the Gram Sabha shall be signatories for bank account of this Nidhi. And that the Sarpanch or GP members can not be signatories. This is a good guarantee of independence of GS. It holds the signatories responsible for all transactions. But what is missing in this provision is the sources or types of income shall be deposited in the GS Nidhi. Our field visits revealed that GS that have transacted in Tendu Patta last year have not used this account. Nor is the government remitting any funds in this account like the MH government.

No other state has mentioned such bank account in its rules.

2 Power of Gram Sabha over natural resources

PESA endows Gram Sabha with powers to govern natural resources that form the foundation of living of the tribes; viz. Jal, Jungle, Jameen. These powers are clearly above and extra to what Gram Sabhas in non-scheduled area have. PESA recognizes that self-rule at habitation level is vital over land, forest, and water - for the right to survival of the tribes.

PESA specifically requires state legislatures to ensure that the local self-government bodies and the Gram Sabha are endowed with these powers. Section 4 delineates⁴:

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

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

... ..

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;

... ..

⁴ Note: Only the relevant sub-sections quoted.

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-

- (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
- (ii) the ownership of minor forest produce;
- (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

The law is categorical that the State legislatures shall not make any law that is not consistent with the features enlisted in section 4.

It is hence vital to examine what provisions state rules have regarding these features.

2.1 Land

Land is universally considered the source of wealth. The tribes have historically faced exploitation over land and alienation from land. Hence the founders of the Constitution included Land in the subjects of special protection to tribes under the Fifth Schedule. 5th paragraph of the Art. 244(1) of Constitution reads:

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

State PESA rules of Himachal Pradesh, Maharashtra, and Gujarat have an identical provision that the land records shall be presented before a Gram Sabha meeting in order to ensure all names of land holders are

properly recorded. Gram Sabha permission or prior consent is mandatory for transfer of land by sale, mortgage, lease-contract etc. in these states.

Gram Sabhas/ Gram Panchayats visited by this research team in four districts of Maharashtra, two districts of Madhya Pradesh and three districts of Gujarat did not have any records or proceedings that mentioned the reading (or presenting) of land records. It can be said that this provision is not implemented.

2.1.1 Restoring unlawfully transferred lands

PESA rules of all states include a provision that “The Gram Sabha shall ensure that no land belonging to Scheduled Tribes is unlawfully transferred to non-Scheduled Tribe persons.” Few states have provided a procedure for ensuring this and even restoring the land to the original tribal tiller.

Sub-section 2-A of Section 170B of Madhya Pradesh Land Revenue Code states:

170B (2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

Thus, it gives a clear modus operandi to restore the possession of land that is alienated from a tribal land holder. This is not observed in other state rules.

2.2 Minor Forest Produce

Minor Forest Produce (MFP) as defined by the FRA 2006 in its sec. 2(i):

"minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

This applies to the entire country and it supersedes all older legislations wherever there is a conflict. Recently notified PESA rules of MP and CG quote this section of FRA for definition of MFP. However, the rules do not follow rather contradict the definition in its application. Same is the case with chapter VI of Rajasthan PESA rules.

The states of Madhya Pradesh, Chhattisgarh, and Rajasthan have federations or corporations managed by officers of the Forest Department that have monopoly control over the most income earning MFP; viz. Tendu-patta and Bamboo. The PESA rules of these states keep the control of these MFP in the hands of these archaic bureaucratic federations and do not hand over to Gram Sabha.

MP rule 25(5) says that 'disposal of MFP shall be as defined in FRA rule 2(1)', which means it includes collection, processing, transport, and sale. The 26(4) contradicts this by saying that the disposal of Tendu Leaf shall be done by the FD-controlled Laghu Vanopaj Mahasangh (federation). This sub rule provides that only if a GS passes a resolution to do so independently before a stipulated date, it can do so. In practice however - as observed in our field visits - the FD has treated GS resolutions as applications or requests and has denied many the right to dispose Tendu-leaf.

Maharashtra has more than 1500 Gram Sabhas (spread over four districts) independently handling the trade and transit of Bamboo and Tendu-Patta. The Gram Sabhas have formed federations to deal with the market forces and have learnt over last six years how to earn maximum from the trade; while keeping the extraction judicious. These Gram Sabhas and their federations are recognized by the FRA. PESA rules of the state did not help this process. Rather there are incidents of misinterpretation by PRI bureaucracy provoking Gram Panchayats to take away the rights of Gram Sabha.



3 Amendments to other laws to comply with PESA

3.1 Rationale for requiring amendments

PESA in a way reverses the colonial origin of our laws to Bharatiya origin. The traditional Bharatiya governance system has been of bottom-to-top with the King being called a servant of state and judicial system taking cues from jurisprudence set by people in villages. The codified and uncoded laws in pre-colonised Bharat were evolved by village assemblies inclusive of all castes, communities, tribes in a village. Such laws were later adopted by states and upheld as codified laws. The authority of a lower Panchayat was never usurped by the higher offices nor even by the King. There are numerous evidences of such practices from all the periods of our precolonial history.

The colonial law-making was intended to break the back-bone of Bharat's independence; which was rooted firmly in the system of decentralized governments and bottom-to-top law making. The colonial rule successfully destroyed all indigenous government systems; with the exception of tribal areas. Many of our current laws have colonial moorings; the systems, the flow of authority, and the attitudes remain aligned to such moorings. And therefore, it becomes necessary that such laws are amended to comply with PESA - that seeks to revive the origins of Bharatiya democracy.

The Scheduled Areas and Scheduled Tribes Commission chaired by Shri Dileep Singh Bhuria in its report in 2004 has elaborated on compatibility of other laws to PESA. The Commission says, "...the State Governments have legal frameworks to regulate natural resources like water, forest, through their own regulatory authorities, which are at variance with provisions of the Central PESA Act 1996. The new committees and groups working at cross-purposes seem to have replaced a consciousness of the total communitarian and consensual ethos by an insistent sense of individual rights, contributing their share to the dismemberment of the traditional management and security systems. The stance of the two sets of legislation needs to be resolved." (Bhuria, 2004, p. 381)

PESA Act in its section 5 clearly requires that, "any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately

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

3.2 Compliance status after 18 years

The Bhuria Commission in 2004 has noted that:

“The PESA Act confers ownership of minor forest produce on Gram Sabhas and Panchayats. But the Indian Forest Act 1927, while not making any distinction between major and minor forest produce, implicitly and even explicitly vests the entire range of forest produce, in the state, meaning thereby the Forest Department. In consequence, it is not incumbent that the provisions of the Indian Forest Act be modified to accord with the provisions of the PESA Act? It can be argued that both the Land Acquisition Act 1894 and the Indian Forest Act 1927 are not laws “relating to Panchayats” - vide reference to Section 5 quoted above. The fact of the matter is that any law applied in the jurisdiction of a Panchayat in Scheduled Areas impinges on the Panchayat and thereby on the provisions of the PESA Act. For instance, Section 4(j) of the PESA Act empowers Panchayats to plan and manage minor water bodies, but forest laws come in the way. In Tupakulagudem village in the Warangal district of Andhra Pradesh, the forest department has refused permission to build a ‘bund’ of a pond located alongside a reserve forest. It becomes essential, therefore, to re-orient the other concerned laws in conformity with the provisions of the PESA Act. (Bhuria, 2004, p. 379)

These observations were made by the Bhuria Commission 18 years ago. As we examine it today, we find that the forest related matters are taken care of by the FRA⁵ rather than by PESA in many states. The FRA with a nodal ministry at the Union level has a clear set of rules and has definite systems with responsibilities. Although, the implementation of FRA has faced challenges, it has to an extent settled the matters of

⁵ FRA: The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of) Forest Rights Act, 2006 and Rules 2008-2012

traditional rights of bona fide livelihood of scheduled tribes all over the country.

The RFCTLARR⁶ Act of 2013 has special sections (41 and 42) for the scheduled areas. This Act to a certain tangible degree has made special protective provisions for the lands in scheduled areas. Yet again, it is not the PESA in states that has assured fairness in land acquisition but another law that has solved the problem.

The Commission speaks about the ‘wide charter of autonomy’ of Gram Sabha in PESA being ‘apparently inconsistent’ with some laws:

“35. Another argument advanced is that like the Indian Forest Act 1927, there are other special laws and, as per court rulings, the special laws over-ride general laws. In this view of the matter, the PESA Act is regarded as a general law to be subordinated to a special law. The PESA Act 1996 also qualifies to be treated as a special law, since it deals with matters confined to one segment of the population i.e. scheduled tribes. It may be true that the wide charter of autonomy conferred by the PESA Act on the Gram Sabha and the three hierarchical Panchayat tiers is apparently inconsistent with some regulatory laws and functions. With the changing times and a heightened sense of democratic consciousness of tribal people, the adaptation of the latter is indispensable. The revenue, excise, irrigation, markets, forest law and regulation regimes antedating the PESA Act thrusts, call for harmonization. (Bhuria, 2004, pp. 379-380)

What the quote above terms as ‘heightened sense of democratic consciousness’ means tribal villages getting used to the modern practices of electioneering and democracy by ballot for the three tiers of Panchayats. The elections to Panchayat have become vibrant over the years. Expectations of people from Panchayats has increased as well.

The democratic consciousness of tribal people is rooted beyond the elections and Panchayats. The roots of Bharatiya democracy - that managed to survive in tribal areas alone - was in essence a democracy by consensus and mutual trust. It was possible mostly because it was in small units (hamlets/Pada/Tola/Phalya) where people knew each other well and were interdependent. It is possible even today where the hamlets

⁶ RFCTLARR: Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

could be notified as Gram Sabha. The Commission appealed to governments that the ‘adaptation is indispensable’ and that the ‘law and regulation regimes antedating PESA’ need to be harmonized.

We observe that after 18 years of the Commission, even on all optimistic scales, this harmonization of laws is minimal.

The PESA Act in sec 4(b) speaks of a ‘community managing its affairs’. This coupled with sec 4(d) invariably means that the community traditionally has commons or common property resources that it manages or governs. The Commission makes following observation about commons:

“36. According to section 4(d) of the PESA Act 1996, the legislature shall not make any law on Panchayats in Scheduled Areas which is inconsistent with the traditional management practices of community resources. This implies that the natural and physical resources vest in the community as of yore, in contradistinction to the recent concept of eminent domain of the State, and they should be managed by it as per its traditions. An instance how this is nullified obtains in Andhra Pradesh. Under the Andhra Pradesh Water, Land, Trees (APWLT) Act 2002, a high-powered authority is constituted for promoting water conservation, enhancement of tree-cover, regulating exploitation of ground and surface water and to advise the Government on strengthening of public participation in conservation of natural resources from time to time in such way that equity in cases of water in different basins, sub-basins, and regions in the state is maintained. The water-users associations are required to adopt measures suggested under the APWLT Act. All land allottees and tenants within the notified areas under the Act are members of water-users associations. The Andhra Pradesh Government has not devolved minor irrigation to Panchayats in Scheduled Areas, notwithstanding the provision in the Central Act. Thus, the state continues to have a legal frame-work which is disharmonious with the authority of the Panchayats, while PESA confers the responsibility for planning and management of minor water bodies on Panchayats. Secondly, in respect of another item of common property resources; land, there are numerous instances where, traditionally, villagers have been cultivating land which has been subsequently brought under the joint forestry management programme leading, as one

consequence, to virtually converting it into forest land in the books of the forest department and, as another, to the demand for 'Pattas'. This has also had the effect in some Scheduled Areas of wiping away the traditional village forest systems, and further creating schism between villages located at the forest fringes and those located at some distance. This situation has major implications in law and policy. Unless issues of such nature are resolved on the ground, eviction of tribal forest dwellers will not stand the test of both propriety and legality. (Bhuria, 2004, pp. 380-381)

While the latter issue of forest dwellers cultivating forest lands is solved to an extent by the FRA, the former of land is not solved at all.



Part 3:

State Chapters

The research team visited and held interactions with various stakeholders of PESA in seven states; viz. Maharashtra, Madhya Pradesh, Chhattisgarh, Gujarat, Rajasthan, Odisha and Jharkhand.

The findings are elaborated state wise in this part. Odisha and Jharkhand have published their draft Rules in 2023. In the case of these two states the focus during field research was on current status of compliance with PESA and understanding the background of delay in drafting and notifying their PESA Rules.

The Maharashtra chapter is lengthy because the state has done a lot more for implementing PESA as compared to other sample states. Last three chapters are of the states where this research did not include a field study.

1. Chhattisgarh

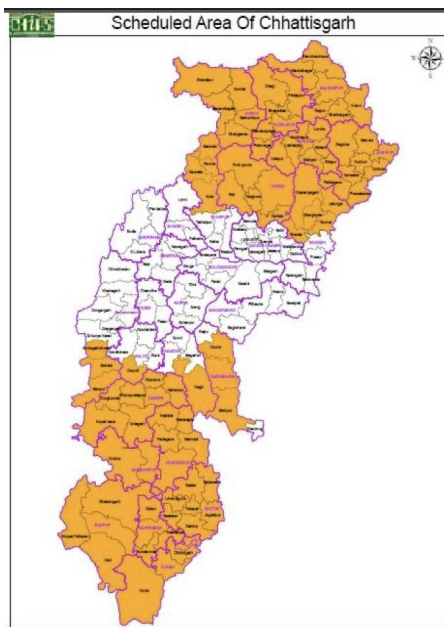


Figure 3: Image source: Presentation by Secretary, Government of Chhattisgarh, <https://panchayat.gov.in/document/presentation-of-chhattisgarh-on-pesa>

1.1 State Summary

The state of Chhattisgarh was separated from Madhya Pradesh in 2000; that is four years after PESA was passed by the Parliament. The state inherited certain statutes from Madhya Pradesh regarding Panchayats in Scheduled Areas. These continue to be in force. There were other legislations by the state after 2000 that have application to scheduled areas. Quite recently, the state has also notified PESA rules.

Some relevant legislations and amendments made therein for scheduled area are:

Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam 1993 (I of 1994) - Chapter

XIV-A with sections 129A to 129F mentioning a gist of Gram Sabha and other PRI powers.

Chhattisgarh Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998 -

Chhattisgarh Land Revenue Code (Act 20 of 1959) - in its Sec 170-B (2A) Gram Sabha has been given right for reversion of land of members of aboriginal tribe which was transferred by fraud. Earlier the power used to be with the SDM.

The Chhattisgarh Excise Act, 1915 - Chapter VIII A: has special provisions for Scheduled Areas - Sec 61D says ST may distil and keep 5 litres of liquor for consumption, 61E says No new factory for manufacturing or outlets for sale of any intoxicants shall be established/opened by the State Government without the consent or permission of the Gram Sabha. Sec. 61F says Gram Panchayat to implement decisions of Gram Sabha and GP can also take help of SDM in enforcing prohibition.

Chhattisgarh Minor Mineral Rules 2015 - Rule 4 (4): The recommendations of the Gram Sabha or the Gram Panchayat shall be mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas; Rule 4 (5): The prior recommendation of the Gram Sabha or the Gram Panchayat shall be mandatory for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas.

1.2 Analysis of State PESA Rules

1.2.1 Definitions

The rules refer to the definition of village as in Chhattisgarh Panchayat Act Sec. 129-A(b).

(b) "Village" means a village in the Scheduled Areas which shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

The definition is taken verbatim from the parent act.

The definition of MFP in rule 2(4) refers to Sec. 2 of the FRA. This means Tendu Patta and Bamboo are included in MFP. Other definitions are taken from existing statutes.

1.2.2 Composition and powers of Gram Sabha

Rule 4(2) puts a population restriction for notification of a new village. The rule requires a habitation to have population at least one-third of the entire Panchayat or 100 (whichever is higher) to pass a resolution in Gram Sabha. Further, 'Gram Sabha' here means the assembly of the entire Panchayat (of all villages therein). It is likely that a weak segment / a backward tribe / a smaller hamlet may not get the entire Panchayat electorate to pass a resolution for empowering it with an independent Gram Sabha. Rule 5(2) confirms this apprehension. It says, the existing Gram Sabha - with 50% quorum - must pass a resolution for constituting a new Gram Sabha.

Unlike Maharashtra rules, where the SDM has to take action within 90 days of receiving a proposal from villagers for a new Gram Sabha, Rule 4(2) and Rule 5(5) of Chhattisgarh do not put any time lapse provision for the Collector or the authorised officer.

Rule 6 gives a comprehensive list of powers and duties of Gram Sabha. However, it is not clear whether Gram Sabha decisions or recommendations would be binding on any implementing agency including GP and line departments. Some of the powers are non-enforceable and intangible; e.g. 6(4) protection, conservation, and monitoring of natural resources and environment or 6(11) GS may plan for protection and conservation of biodiversity and traditional knowledge. With Gram Sabha not having any functionaries to enforce or funds to execute a plan, this function remains non-enforceable.

1.2.3 President, Secretary, and Office of Gram Sabha

Rule 7 is a commendable provision that separates Gram Sabha president from Sarpanch. This ensures the basic democratic principle of checks and balances between legislature and executive. Rule 10(2) gives the president of GS the power to convene a special meeting of GS with a seven days' notice.

Rule 8 elaborates the Gram Sabha secretary roles and responsibilities. This rule does not provide for an alternate secretary in case the GP secretary abstains. Provision for an alternate Secretary is provided in Madhya Pradesh and Maharashtra PESA rules.

Rule 9 does not provide for a separate office of Gram Sabha, unlike Maharashtra. It is better to have all records related to a village in the office of Gram Sabha rather than GP.

1.2.4 Voters' right to convene a meeting

The provisions for calling / convening of meetings of Gram Sabha in Rule 10 are quite commendable. More so, because it provides for 5% or 25 voters to demand a special meeting of the Gram Sabha. This provision is missing in Maharashtra and some other states.

The provisions regarding quorum in Rule 11 and the method of decisions in Gram Sabha in Rule 12 are democratic. Decision for consensus is natural to a truly tribal village. Waiting for consensus too is natural. Hence Rule 12(3) correctly captures the tribal tradition of decision making.

The procedure of record and minute keeping of GS as described in Rule 13 is heavily dependent on the GP secretary. The possibility of his/her absence is not considered. The experience of multiple GS in a GP suggests that there must be an alternate secretary available. The provision in MP rules is worth emulating; where educated youth in the village can be nominated by the GS president as secretary for a GS meeting.

Rule 16 provides for joint meeting of Gram Sabhas in a Panchayat. Rule 10(5) needs to be amended calling the Annual Gram Sabha as joint Gram Sabha, so that the Rules of quorum in such Sabha apply to the Annual Sabha.

1.2.5 Dissolution of committees with overlapping domains

Rule 17(5) is a good provision which dissolves all other committees that may have conflicting domains with the RPMC (Resource Planning and Management Committee) and Peace & Justice Committee of a Gram Sabha. This means JFMC or Van Suraksha Samiti as well as Biodiversity Management Committee must be dissolved. It is not confirmed whether the state government has dissolved these committees and where their funds are transferred.

Rule 19(1) says that the RPMC shall prepare a plan and monitor the implementation of the plan for MFP, minor minerals, and minor water bodies. But Rule 31(1) deprives the Gram Sabha of the rights over so-called nationalised MFP.

Rule 29 gives GS power to issue directions to stop pollution in water bodies. Who or how will these directions be enforced is not clear in the rule.

1.2.6 Self-contradiction on MFP

The provisions about MFPs are self-contradictory. The definition of MFP includes all types of MFPs as in FRA Sec.2. That means no MFP can have special 'nationalised' or state-monopoly status. Rule 30(2) says that the disposal of MFP shall be as per the FRA rule 2(1)(d). The quoted rule includes harvesting, processing, storing, selling - i.e. every process is included in 'disposal'. Rule 31 contradicts this by mentioning that sale-purchase-royalties etc shall cover only the 'non-nationalised' MFP. Rules 33 and 34 are sound provisions about forest crimes and forest planning. It would have been better if 33(2) was aligned with FRA where Forest Department is expected to integrate the plan (CFRMP⁷) prepared by the Gram Sabha in its working plan.

Rule 35 provides good provisions about transparency in land records and involvement of Gram Sabha in corrections and changes in records as well as consultation before change of use of a land in the village. Any mode of transfer of land requires prior intimation to Gram Sabha. Rule 37 provides clear provisions for retrieval of tribal land illegally transferred.

Rule 36 has provisions regarding prior consultation with GS before land acquisition or direct purchase by state agencies. It prohibits the presence of people other than government representatives and members of Gram Sabha in such consultations. Rule 36(5) says GS can appeal to the Collector against land acquisition. This provision can be hardly justified, because the Collector is - in most cases - leading the land acquisition. For such appeals, an independent arbitrator / authority is required.

Rule 49(6) says Gram Sabha shall try to protect minimum necessities of a defaulter debtor in case there is confiscation or attaching of his land and property. It is not clear how the GS will do it, if a licensed money-lender or a bank is lawfully attaching the property. It is also worth observing how Rules 49(3,4) are followed where the lender has to disclose

⁷ CFRMP: Community Forest Resources Management Plan

all loans given in a Gram Sabha. In normal cases, the debtor's privacy is protected by the lenders.

Rules 51, 52, 53, 54 are of recommendatory nature where it is recommended that the GS may make plans for agriculture, motivate people for self-employment, and maintain cultural heritage. Nothing was restraining the Gram Sabha from doing this before these rules were notified, and there is nothing that is strengthening the GS in doing so after the rules.

1.3 Primary Data Findings

1.3.1 Missing legislations

The state, despite making many amendments to certain laws and rules, missed two most critical subject areas; viz. 1) ownership of minor forest produce, 2) control over plans including tribal sub plan.

There is no change whatsoever in the MFP laws and rules in the state. As mentioned in the earlier section on CFRR, Tendu and Bamboo continue to remain under complete state control. The Tendupatta Adhiniyam of 1964 continues to be in force. The MFP transit rules are not amended. All that the state has done in this regard is a wishful thinking in its state forest policy of 2001; which reads:

4.5.2 The state should take necessary steps for endowing the ownership rights of MFP on local communities as per the provisions of the Panchayat Upbandh (anusuchit chetron ka vistaar) Adhiniyam 1996.

Some of the minor minerals found in Chhattisgarh are stone granite, marble, agate, chalk, china clay, dolomite, feldspar, mica, quartz, silica sand, slate, calcite, etc.

Chhattisgarh minor mineral ordinary sand (quarrying and trade) Rules, 2019 in Rule 3 (5) say: *In scheduled areas the provision of the Panchayats (extension of the scheduled areas) Act, 1996 (No. 40 of 1996) shall be followed.*

The prior consent of Gram Sabha is mandatory for mining, but there is no sharing of revenue.

1.3.2 Amendments only on paper

Chhattisgarh (as a part of Madhya Pradesh) made some amendments to its Panchayat Raj Adhiniyam 1993; i.e. adding Chapter XIV-A and sections 129A to 129F.

Sec. 129A copies verbatim the village definition in PESA and sec. 129B provides a process for notifying a village. When the research team asked people in villages it visited, they were not aware about it. When enquired with the village panchayat and intermediary Panchayat officers, they too were not aware of such provisions. Sec. 129B(2) provides for people making a resolution for a separate Gram Sabha for their hamlet (or group of hamlets).

Chhattisgarh has ‘Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules’ 1998. These rules provide prescribed procedures for constituting a new Gram Sabha and for conducting its meetings and business. Rule 4(2) has a self-defeating provision. It reads:

(2) Gram Panchayat or Gram Sabha by passing a resolution of this effect or the voters residing in that area by passing a resolution or by submitting an application in writing, may request the prescribed authority for establishment of a separate Gram Sabha...

This rule provides three options (separated by ‘or’). Former two are self-contradictory and the latter is deprived of knowledge: 1) The Gram Panchayat will never want to lose its power by creating an institution that shall keep a check on it, 2) The Gram Sabha that already exists includes a bundle of villages that have no common reason to pass such resolution of a separate Gram Sabha, and 3) the voters residing in a hamlet will never know that such option exists.

This precisely has happened since 1998 and the state failed to provide the research team a single example of a village notified by rule 4(2).

1.3.3 Absence of PESA implementing agency

The research team had asked the State government for a nodal officer at state level with whom the team shall communicate. The

government failed to nominate any officer, because it has never fixed the responsibility of implementing PESA on any department or officer.

Since there is a vacuum on top, the same exists at all levels. There has been no training of Panchayat Raj officers on the current provisions related to PESA. Neither the tribal welfare department nor the Panchayat Raj department has ever conducted any awareness campaigns on PESA.

1.3.4 Observations in implementation



Figure 4: Focused Group Discussion in Kanheli, Chhattisgarh.

1. The implementation of PESA Rules is in a nascent stage. It has been one and a half years since the State PESA Rules were passed.
2. New Gram Sabhas have been notified through PESA. Through our field investigation, we observed that people are not fully aware of the powers and functions of Gram Sabha at community level. In a village we visited in Mohla-Manpur-Chowki (MMC) district, people believe that their Gram Sabha was notified, but they had no notification in hand. Nor had they elected a President.
3. There is confusion between FRA Gram Sabha, and PESA Gram Sabha. They are perceived as separate by people, though both laws have the same definition.
4. Villagers are conducting Gram Sabha at tola/mohalla/village level. But the Rules restrict the powers of Gram Sabha by keeping the GP Secretary as the GS Secretary. Even if the Gram Sabha wants to take up any initiatives, and is

proactive; it is still dependent on the GP Secretary as he/she has to write the proceedings.

5. Not all villagers attend the Gram Sabha of the Gram Panchayat. Only 2-3 people from a village attend it. As there are many villages in a Gram Panchayat, not all issues of all villages are taken up. In our field study, the villagers told us that they sit outside the GP office building, and don't know what is being discussed. Later someone comes, and just takes their signature.
6. The state Tendupatta Adhiniyam, 1964 continues to be in force. Despite clear provisions in Section 2 of FRA on what all is defined as MFP, the state has not let go of its control on Tendu patta sale. Kanheli village in MMC district was denied the rights to sell their tendu leaves on their own. Their CFRR rights are also pending with the government. Despite notifying the tribal and forest department beforehand, their vehicles with Tendu leaves were confiscated by the Forest Department while being transported from one warehouse to another. As of now, the issue is pending in the High Court. As many months passed on this issue, the tendu leaves have degraded. What could have been a step towards financial empowerment of Gram Sabha, became a loss for them.
7. Some villages claimed and received CFRR under FRA before the state PESA Rules were notified or before people were fully aware of the committees needed to be constituted under PESA. As of now there is confusion over the role of FRC, CFRMC and RPMC. In one village, their first Gram Sabha was headed by the President of the RPMC. The village community was not sure of who should be the President of the Gram Sabha.

1.4 Recommendations to the State of Chhattisgarh

1. State laws like Tendu Patta Adhiniyam 1964 that contradict PESA need to be repealed. Currently, the Forest Department Corporation is controlling the sale of Tendu Patta. But both PESA and FRA give ownership rights of MFPs including Tendu leaves to people. The corporation should be dissolved and a new body federating on principles of FRA should be formed.
2. Government officers at all levels of tribal, revenue and forest needed to be sensitised and made aware of provisions of FRA specially related to MFP. As tendu leaves are defined as MFP in FRA and FRA overrides contradicting laws and orders, officials can no longer stop Gram Sabhas from collection and disposal of Tendu leaves as they deem fit.
3. The notification of a Gram Sabha should be more people-oriented. In case the concerned government official fails to notify a Gram Sabha within stipulated time then the Gram Sabha should be deemed notified.

4. The Rules should be amended such that the Gram Sabha can elect or nominate its own secretary when the GP secretary is unavailable. The Gram Sabha should also have its own office within the village.
5. The Rules need to be amended such that the Gram Sabha Kosh should be operated by members of the Gram Sabha and not the Gram Panchayat Sarpanch and Secretary.
6. The State should make provisions to provide at least 5% of TSP fund to be directly transferred as untied fund to Gram Sabha. (Maharashtra model to be followed.)
7. Awareness programmes for SDM and district level officials should be conducted to dismiss myths about 'Main' Gram Sabha and 'PESA Gram Sabha'. Similarly, there is no separate Gram Sabha of FRA and PESA. They should also know the powers and functioning of Gram Sabha, and treat them as an independent body of governance.
8. Establish a PESA monitoring and capacity building cell at state level with officers from Panchayat Raj and Tribal Areas departments and independent experts.



2. Gujarat

2.1. State summary

Gujarat has like all other states traditional village assemblies in its villages. People come together in a Phalyo or hamlet and elaborate on community matters; whether it regarding use of a community resource or a festival or a wedding or conflict resolution. The state however has taken no efforts at all to notify Gram Sabha that could synchronise with this traditional assembly that exists in the small habitations. The state rules have no provision for notifying such villages nor does it allow voters in a village to propose so. The Gram Sabha - which is expected to play a legislature role in the village - is completely dominated by the Gram Panchayat. The state has not provided separate president for Gram Sabha nor a secretary. There are numerous restrictions on what members of a Gram Sabha can speak or bring up in a meeting. The calling of a meeting of Gram Sabha too is controlled by the Sarpanch. Voters have no right to convene a meeting, unlike what MP, Rajasthan, Maharashtra rules provide. The voters are also expected to give in writing 'in precise terms'

five days in advance to the Panchayat office and the motion must be of an affirmative nature. Whether to allow a citizen to bring up such motion is completely at the discretion of the head of executive i.e. Sarpanch. Such unchallenged power to the Sarpanch strips Gram Sabha of any meaning. It violates the basic constitutional principle of checks and balances between the legislature and the executive.

Voters or any human beings attend an assembly only when their voice matters. The Gram Sabha as provided in Gujarat PESA rules has no place for such voices. The rules are simply ensuring that the Gram Sabha meeting never really happens.

The rules have a provision that land records related to a village shall be read aloud / presented before Gram Sabha to ensure land holders' names are recorded correctly. The villages this research team visited did not have any experience of land records being read in a Gram Sabha meeting.

2.2 Primary Data Findings

1. The lack of a strong provision for MFPs in PESA is impacting the ability of Gram Sabhas to collect, dispose and utilize MFPs as they could. They are unable to dispose and collect MFPs (especially *Tendu* leaves and bamboo) without interference and objection by the forest department. A village in Narmada district is in a conflict with the forest department federation to acquire transit passes to sell *Tendu* leaves directly to the buyers.
2. Talathi cum mantri (Gram Panchayat Secretary) in the Scheduled Areas are burdened with work. They are in-charge of multiple GPs. Hence, they are unable to work efficiently. Many TCMs are retired but their tenure has been extended because of their work experience and no new recruits are being hired for the position. These factors are contributing to mismanagement, inefficient administration and reduced implementation of FRA and PESA in the region.
3. Gram Sabhas are not notified at faliya tola, pada, hamlet level. A village as defined in PESA comprises of a community that traditionally manages its affairs. notifying a Gram Sabha at revenue village level does not align with this.
4. The district administration has neither guidelines nor monitoring from state level regarding PESA.



Figure 5: FGD in a village in Mahisagar district

2.3 Recommendations

The state rules must be amended:

- a) to provide for a process whereby voters in a hamlet can propose to separate their Gram Sabha. And for the SDM/DM to notify such Gram Sabha after due verification within a limited timeframe.
- b) to ensure Sarpanch and Up-sarpanch are disqualified from being Gram Sabha president
- c) to provide for voters to demand a special meeting of Gram Sabha and to decide the date-venue-time of a Gram Sabha meeting
- d) to keep all records of a Gram Sabha in a separate GS office in the habitation and not in GP

The Gujarat PESA Rules inhibit Gram Sabhas to access all MFPs. The provisions on MFPs need to align with FRA. The Rules should be such that will enable and empower the Gram Sabhas to manage, collect, dispose and utilize all forest resources.

State should consider devolving funds to Gram Sabha with a fixed percentage of TSP budget allotted to them and provide hand holding support. (Maharashtra example may be followed.)

Create dedicated PESA cells at state, district and block level to improve implementation and notification process. Unless the

implementation is monitored and managed by a dedicated line of command, it will remain at a standstill.



3. Jharkhand

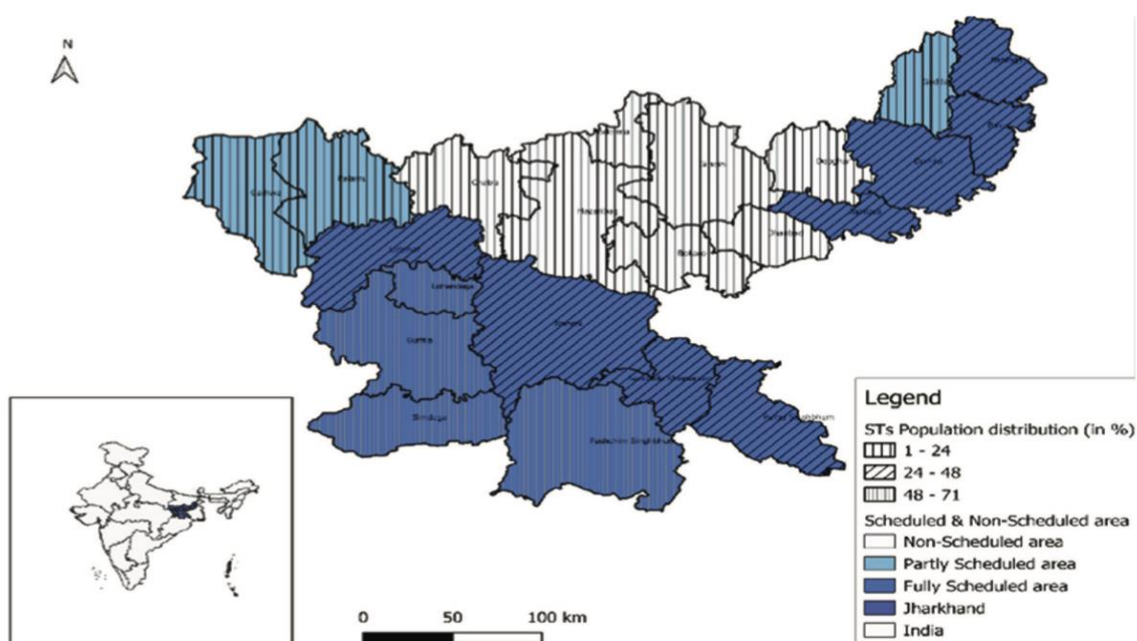


Image source: Sinha, A. A., Behera, H. C., Behura, A. K., Sahoo, A. K., & De, U. K. (2021). *Indian Journal of Human Development*, 15(3), 443-467.

3.1 State Summary

The debate in Jharkhand over PESA rules is a high-level ideological debate, marked by a fundamental disconnect with village level realities and aspirations of common tribal villagers. The criticism of the latest draft rules mostly revolves around demand for sec. 4(o); i.e. designing of District Panchayats on the pattern of Sixth Schedule. For all practical purposes, this has nothing to do with what common people aspire to. Their aspirations - as understood through the researchers' direct interaction in villages - is of Gram Panchayat being more responsive and Gram Sabha being more effective. This could be easily achieved if there were a clear process for voters in a village to propose for a separate Gram Sabha.

There is no need to have and perhaps no use of having an autonomous district council - if the goal is to get common people a voice in local government. PESA at its core seeks to strengthen the Gram Sabha that

already exists in a 'community managing its affairs in accordance with traditions and customs'. PESA aims to make this de-facto village assembly into a de-jure Gram Sabha.

There is an argument that Zilla Panchayat, intermediary level Panchayat, and Gram Panchayat be replaced by traditional tribal institutions. It is argued that the tribes have self-government institutions from village to Pargana levels. It is true that all rural societies have elements of social organisation that have ascending levels and command trust of the people belonging to a particular community. Such systems often work in the domain of society, rather than that of state. These community institutions are trusted by people, but are not looked upon as 'government'. People tend to separate these two domains. They allocate: 1) cultural and social decisions to traditional hierarchy, and 2) secular-governmental decisions to legal/constitutional hierarchy. For instance, in a traditional Pargana level assembly of a tribe, they do not expect to discuss which government scheme to allot to which beneficiary. Further, traditional institutions are usually sustained by voluntary contributions of the community; which keeps them directly accountable to the community and independent of the government. On the contrary, Panchayats sustain on government grants and tax revenues. These incomes are unfortunately not considered by people as their own. Hence when dealing with a Panchayat, common people turn into aspiring beneficiaries rather than decision makers. The people in power become holders of government kitty competitively deciding where to spend or whom to benefit. Traditional institutions do not involve competition, because there is no hidden treasure. If traditional institutions of representative nature are assigned the role of dealing with government kitty, they are likely to behave like the current competitive Panchayats. And they may prove to be worse without the accountability of facing elections.

The demand of replacing existing Panchayats with traditional bodies has never been a popular demand. It is probably because people with their inert wisdom understand the separation of societal and state domains.

Jharkhand has a history of irregularity of Panchayat elections (from ZP to GP). This might have eroded people's trust in these institutions and people may not regard them as responsive or accountable to public opinion. The solution however would be to conduct regular elections, rather than replace or discredit these institutions.

The researchers interacted with villages belonging to PVTG and ST and also with villages having ST and non-ST population. We observed that traditional assembly existed in all these villages and these assemblies did not belong to any particular caste or tribe, but included all communities in a habitation. They assemble for dispute resolution and on pre-sowing and post-harvesting festivals. There is a village fund where all households contribute an equal amount and expenditures are read aloud in the assembly. The ‘*panch-kharcha*’ collected during dispute resolution is spent on common purpose expenses. There are systems of restraint over extraction of natural resources and such systems are observed with discipline by all communities in the village. These are attributes of what Bhuria Commission called ‘a face-to-face community’ or what the PESA defines as ‘comprising a community that manages its affairs’.

The fundamental problem that Jharkhand - like all other states - has is non-recognition of this village community as the Gram Sabha. There are civil society organisations that have inspired people to conduct a Gram Sabha and also proclaim so by displaying boards in the hamlet or group of hamlets. But putting a board though, a Gram Sabha does not acquire the legal powers that are due to Gram Sabha. The Panchayat Raj institutions remain indifferent to this tiny Gram Sabha, for there is no notification by the state.

Jharkhand had passed rules in 2003 for constitution and conduct of meetings of a Gram Sabha (Jharkhand Gram Sabha Gathan, Baithak ki Prakriya, Evam Kamkaj ka Sanchalan Niyam, 2003). These rules ridiculously put a limit of 30 days - from the date of its notification in gazette - for villages/hamlets to propose a new Gram Sabha formation. Proposals after the said period would be entertained only if the Collector / DM finds the reasons for delay reasonable. The people who would have benefitted most likely did not even know about these rules, certainly not in one month of its publication. There was no awareness/IEC campaign by the state to propagate the rules ever since its notification.

3.2 Analysis of State Draft PESA Rules

Ref.: Government of Jharkhand - Department of Panchayat Raj
Notification G.S.R. 1784 Dated 26/07/2023

Rule no.	Description	Analysis

4 and 5	These rules refer to 2003 Jharkhand Gram Sabha (constitution, process of meetings, conduct of business) rules sec. 3 to 13	<p>The referred rules of 2003 have never been effective evident from the fact that a separate Gram Sabha was never notified for a hamlet or group of hamlets.</p> <p>Rule 4(ii) puts a limit of one month (from the publication of this notification) for people to propose a separate Gram Sabha, but there is no limit on the DM to process such proposals.</p> <p>Rule 5(a) of 2003 has also been ineffective because Gram Sabha has remained at the Gram Panchayat and not at the village (as defined by PESA). It is impossible for one-third of voters to come together at GP level and demand a special meeting of the Gram Sabha.</p> <p>Rule 5(c) of 2003 elaborates about who shall preside over a Gram Sabha meeting. It could have been simpler by letting the voters decide the chair; along with debarring the Mukhiya and GP members from presiding.</p> <p>Rule 6 (a) says the time, place, date of a GS meeting shall be decided by the Mukhiya. There is no provision of voters deciding the same. (E.g. Maharashtra and Rajasthan have a provision that voters in a GS meeting can decide the date, place, time of next meeting.)</p>
5.1	Gram Panchayat shall work under general supervision, control and direction of Gram Sabhas	The provision does not clarify in case Gram Panchayat do not execute their functions, what shall the Gram Sabha do? Some regulatory/supervision mechanism shall be placed to ensure that Gram Panchayat works as directed by the Gram Sabha.
6.1 and 6.2	Has provisions of Standing committees in a Gram Sabha and their functions respectively.	<p>It is necessary to ensure there are no committees with overlapping or conflicting domains. There should be a clear provision that Sub-committees of Gram Panchayat with the same subject or territory mandate shall be dissolved.</p> <p>The provisions extend to form many committees for different purposes. Although</p>

		<p>there is no description in the rules; how the management plans of these committees shall be communicated to the line departments for their implementation. It is unlikely that coordination between Gram Sabhas and concerned departments can be streamlined without a clear mandate.</p> <p>It is an experience across states that committees without funds and functionaries are built to fail.</p> <p>If the government is not providing any support for a particular function of the Gram Sabha, people or the village community is going to find its way. And that will not have any relation with committees mentioned in the draft rules.</p>
9.1	Approval of plans by Gram Sabha	This rule is clear and commendable.
9.2	Gram Sabha may look over the work of any government and non-government agencies that are working in the area.	<p>Sub-clause (a) empowers Gram Sabha to ask for a report from the implementing agency. But the clause does not give a period within which the implementing agency shall present such a report. It does not clarify whether the work taken up by the agency shall continue without reporting to Gram Sabha.</p> <p>Sub-clause (b) says Gram Sabha can give directives for improvement. But it does not mention whether such directives shall be binding on the agency.</p> <p>It does not mention what action shall be taken - and by whom - on the agency that abstains from presenting before a Gram Sabha.</p> <p>The provisions are quite toothless.</p>
9.3	Sub-clause (c) provides for an eventuality where a government work is stopped or is likely to be abrupted because of a Gram Sabha resolution.	<p>There is no clause to explain the eventuality of an agency not presenting its project plan or work progress before a Gram Sabha.</p> <p>The eventuality of a work being stopped hints that a Gram Sabha may use force to</p>

		stop a work. What force a Gram Sabha can use is not explained however.
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3.3 Observations on Status of PESA compliance in the State

1. Currently Gram Sabha is for the Gram Panchayat, not for villages as defined in PESA. Multiple Gram Sabhas in one GP is a foundational requirement of PESA.
2. There is no quorum required for Gram Sabha once it is postponed for want of a quorum. So, it is possible in case of land acquisition that the Gram Sabha meetings are conducted for mere formality. It is a general practice that Gram Panchayat submits a resolution to the acquiring officer on behalf of Gram Sabha.
3. It was observed during village interactions that traditional Gram Sabhas have been traditionally managing natural resources within their traditional boundaries. Many communities in the scheduled areas of Jharkhand are forest dependent. They have their own cultural practices for conflict resolution and for celebration of different festivals as well. But traditional Gram Sabhas are not recognised by law.
4. It was observed that during instances of conflict resolution, the traditional Gram Sabhas opt for mediation via mutual understanding between the two parties. In cases where a “*Panch Baithak*” has to take place, both parties bear the cost of *Panch*.
5. Latehar is abundant in minerals like the rest of the State. Hence, there is mining of rocks and minerals from the villages of Latehar. During investigation by the research team, it was found that the Gram Sabhas were not involved before sanctioning leases of mining minerals and rocks. There are cases where lease has been granted on land under cultivation and even where their homes have been built. This has caused a rift between the contractor and the villagers. The contractors are adamant on mining on their granted area while the villagers do not want mining to take place.

3.4 Recommendations for the State

1. The first and foremost is the state has to pass/notify rules in conformity with the letter and spirit of the parent PESA Act.
2. The voters in a village or group of villages with traditions of managing their affairs as a face-to-face community - must have an easy process to propose a separate Gram Sabha. Such proposals should be submitted to the nearest magisterial office i.e. the SDM and the administration with a reasonable time frame should be bound to notify such a village as a Gram Sabha. (MP and Maharashtra examples may be followed.)
3. All previously passed rules and regulations regarding scheduled areas should be synthesised into one set of comprehensive rules. The draft rules having references to other rules makes it difficult for a common

villager to comprehend. It is vital that a unified body of PESA rules should be available in Hindi and English in the public domain.

4. In Jharkhand PESA draft rules, traditional boundaries of the Gram Sabhas are acknowledged. However, no provision for demarcation of this traditional boundary is mentioned. A provision to identify and attach hand-drawn map showing the traditional boundary of the Gram Sabha is necessary to identify the area of jurisdiction of a Gram Sabha.
5. Rules and regulations regarding minor forest produce (MFP) and minor minerals should comply with PESA Act. In case of MFP, the rules should comply with provisions of the FRA.



Image 6: Women in Focused Group Discussion in Latehar, Jharkhand



4. Madhya Pradesh

4.1 State Summary

The state notified its PESA rules in November 2022. The Panchayat Raj department of the state appointed a training agency for conducting mass trainings at all levels throughout the 20 scheduled districts that the state has. The then CM proactively talked about provisions of PESA rules through his public meetings. There was a budget sanctioned for IEC/awareness activities regarding PESA. The state appointed district and block PESA coordinators as well as village mobilisers. The output of all this ought to be seen in terms of Tola/Phalya getting notified as Gram Sabha. The number of newly notified Gram Sabha (by voters' resolution) is 124. This is miniscule considering there are 11,595 revenue villages in

the scheduled areas of the state. It would be safe to assume that the number of Tola/Phalya would be at least double this number.

Another output of MP PESA implementation is seen in terms of Gram Sabhas opting to procure and sell Tendu Leaf independently of the erstwhile system of going through the state Laghu Vanopaj Mahasangh (Minor Forest Produce Federation). The field visit and interaction with Gram Sabha presidents revealed that many resolutions by Gram Sabhas forwarded to forest officers were kept pending and many were not accepted. It was noteworthy that the forest officers called these resolutions as “Arzi” or applications. The rules are clear that the Gram Sabha simply has to communicate its resolution to the forest officers before a certain date (see Rule 26(4)). This is not Gram Sabha applying to forest department nor is the department having any right to reject.

Forest department rejecting or keeping pending such applications is completely violative of the rules.

4.2 Review of State PESA Rules

It was only in June 2022, a Tribal cell (*janjatiya prakoshth*) at Raj Bhavan was organised to look into PESA and other related matters. It is learnt that the cell provided momentum and the state Panchayat Raj department finally released a draft of rules.

The draft rules released in public domain on 22nd of September, 2022 have certain promises and some major misses. The same rules were notified on 15th November, 2022.

4.2.1 Identification of a new Gram Sabha

The procedure for constituting a Gram Sabha in *Falia* or *Tola* as given in Rule 3(1) is quite elaborate and is better than many other states. Notable is the provision in 3(4)(d) that sets a time limit of three months for the administration for notifying the Gram Sabha.

In 3(4)(j) Gram Sabha has been given the status of an autonomous corporate body. No other state rules mention it so clearly, except the draft rules (not notified) of the neighbouring Chhattisgarh.

In rule 4(2), the Sarpanch or Panch is disqualified from being the President of the Gram Sabha. This is a good provision from the point of view of democratic equilibrium (or checks and balances) between the legislature (Gram Sabha) and the executive (Gram Panchayat).

The provision for calling a special meeting of Gram Sabha as in Rule 6 is a people-friendly provision, whereby a certain number of voters can orally submit a request to the GP secretary. Otherwise, calling a meeting remains monopolised by the GP secretary, who also happens to be the secretary of Gram Sabha.

There is a provision of Gram Sabha fund in rule 13(2), but there is no clear source of money coming in this fund or in the account. The Gram Panchayat is least likely to dispense its funds or give them away to Gram Sabha fund. And if Gram Sabha has no source of income, then Gram Sabha will remain weak without money.

4.2.2 Protection to Land

17(3) provides for consultation before diversion of community land use. This is good, but the state has hardly recognized any community forest resource rights. Unless the right of Gram Sabha over community land gets recorded in the land records, this provision will remain futile.

With a view to return the illegally transferred lands to original tribal tiller of the land, M.P. already has good provisions in Land Revenue Code sec. 170-B. The same is quoted in these rules.

The rights given to the Gram Sabha and Panchayats on water bodies in Rule 21 are commendable. There is a good provision in Rule 23(2)(a) regarding new liquor shops - that new shops will not open without the permission of the Gram Sabha. In this also the condition of the time limit is people-friendly. It reads:

(2)(a) (Gram Sabha) may permit to open a new shop within a period of 45 days from the date of receipt of a proposal from the prescribed officer to open any new country/foreign liquor shop. If the Gram Sabha does not take unanimous decision within 45 days, then it shall be deemed that the Gram Sabha does not agree on this and the shop will not be opened.

4.2.3 MFP excluding the cream

There are some serious issues in the Rule 25 and 26 regarding Minor Forest Produce. Madhya Pradesh continues to have archaic laws like Tendu-patta Adhinyam of 1964, where Tendu-patta the most profit-making MFP is controlled by the State. The provisions of this law - rather the idea of so-called nationalisation of certain MFP itself - is contrary to the letter and spirit of FRA.

The rules in the first part of definitions quote the definition of MFP from the FRA. The Rule 2(1)(d) of the Forest Rights Act is also mentioned in 25(5): “Disposal of minor forest produce shall be meant as mentioned in rule 2(1)(d) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules 2012”.

The said rule in FRA reads thus:

(d) “disposal of minor forest produce” under clause (c) of sub-section (1) of Section 3 shall include right to sell as well as individual or collective processing, storage, value addition, transportation within and outside forest area through appropriate means of transport for use of such produce or sale by gatherers or their cooperatives or associations or federations for livelihood;

Explanation:

(1) The transit permit regime in relation to transportation of minor forest produce shall be modified and given by the Committee constituted under clause (e) of sub-rule (1) of rule 4 or the person authorized by the Gram Sabha,

(2) This procedural requirement of transit permit in no way shall restrict or abridge the right to disposal of minor forest produce,

(3) The collection of minor forest produce shall be free of all royalties or fees or any other charges’

The definition of minor forest produce as in the FRA is also accepted and mentioned in these draft PESA rules. This in turn means, Tendu leaves and bamboo are also included in minor forest produce. The so-called ‘nationalization’ - which for all practical purposes means bureaucratization - of these premium MFP as per The M.P. Tendupatta Act of 1964 stands invalid when juxtaposed with FRA.

The draft rules on one hand are giving reference of the Forest Rights Act regarding minor forest produce, and on the other hand Rule 26(4) states that in case the Gram Sabha wishes to market the Tendu leaves on its own, the Gram Sabha will have to inform the Forest Department. This is like the owner forced to seek the permission of the tenant! This provision in order to be in harmony other provisions of the same draft -

must be turned upside down - wherein the state controlled MP Laghu Vanopaj Sangh takes permission from the Gram Sabha.

4.3 Primary Data Findings

The state had passed - most significantly - M.P. Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998. These rules had a provision for hamlets (*faliya* or *tola*) to apply for being constituted as a Gram Sabha. But this provision was never used. Panchayat Raj department officials at the state level as well as at districts visited by this research team reported that no such *faliya* or village was notified as Gram Sabha. Rather the research team found that a proposal or application put up by a village in Jhabua district was kept in cold stock by the SDM office without taking any action to constitute the Gram Sabha.

When the research team asked PRI officials about provisions of Gram Sabha meetings in these rules, they could not give any answers. It was observed that they were not aware of the 1998 rules.

The state made amendments to its M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (MPPRAGSA) adding a chapter XIV-A with special provisions for Panchayats in Scheduled Areas. Section 129B(4) in this chapter reads:

(4) The meeting of "Gram Sabha" shall be presided over by a member of the Gram Sabha belonging to the Scheduled Tribes not being the Sarpanch or the Up-Sarpanch or any member of the Panchayat, to be elected for the purpose by the majority of the members present in that meeting.

The research team asked the GP secretaries it interviewed as well as Janpad CEOs whether Sarpanch or Up-Sarpanch preside over Gram Sabha meetings. And they said yes. They were not aware that the Sarpanch was disqualified from being Gram Sabha president. Not a single GP could produce proceeding books (or any other records) that could prove Gram Sabhas were being held for each village and not as an aggregate at a Gram Panchayat. This was violative of Sec. 129B(2) which says, "Ordinarily, there shall be a Gram Sabha for a village..."

Sec. 129E (2) of MPPRAGSA reads:

The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in a Panchayat in the Scheduled Areas at the intermediate level or in a Panchayat in the Scheduled Areas at the district level

The research team interviewed ZP CEOs and they were not aware of this provision of nominating persons from un-represented tribes. As per census 2011, Dindori district (rural) has 41,705 Baiga population. Kols are 30,254, Pardhans are 12,812. None of these tribes have a representative in the Janpad Panchayats nor in the ZP.

The M.P. Transit (Forest Produce) Rules, 2000 do not make any separate provisions for Scheduled Areas, nor recognize the ownership of Gram Sabha on MFP. Since the rules were formulated after PESA 1996, there should have been a cognizance of special provisions for scheduled areas.

4.3.1 Observations in Implementation

1. Madhya Pradesh PESA rules were notified in Nov 2022. They were implemented on fast-track mode all over Madhya Pradesh with a dedicated portal and staff for PESA. Since 2022 there have been many training drives for district coordinators, block coordinators and PESA mobilizers to percolate rules to the ground level. Maximum no. of notified Gram Sabhas are in Dhar i.e. 1292 and minimum is in Umaria with 100 Gram Sabhas (data provided by M.P. PESA cell).
2. Surely, district coordinators benefitted from the training drives. District coordinators were entrusted to percolate PESA in their district, but they failed to train block coordinators and PESA Mobilizers. Many trainings conducted by them were purely theoretical and a mere formality.
3. The Gram Panchayat officials do not allow PESA Mobilizers to work on PESA. Often Gram Panchayat and Janpad CEO assign work to PESA Mobilizers and Block and District coordinators (appointed under PESA cell) respectively. The work is usually of awareness of different schemes, updating KYC, data entry work etc. Since their salary is managed by the Panchayat Dept. of the district, they naturally report to them.
4. It was observed that the officials hired in specially constituted PESA cell for execution of PESA lack assistance, authority and right tools to effectively implement PESA in Gram Sabhas.

5. The officials from the state PESA cell often complained that PESA Mobilizers lack knowledge of PESA. They were persistent in cramming the PESA Rules to the PESA Mobilizers. They seemed unbothered by the problems Mobilizers were facing on field. While addressing them, they only insisted on learning all the provisions mentioned in the M.P. PESA Rules. This indicates a massive failure in the training drives that were conducted by the state.
6. After more than a year of M.P. PESA Rules, PESA mobilizers, Block coordinators, District coordinators and the Gram Panchayat lack clarity about the difference between a Gram Sabha under PESA and Gram Sabha under the M.P. Currently, the “Gram Sabha” is being conducted as per the M.P. Gram Panchayat Act. The common understanding was that Gram Sabha takes place 4 times a year in the panchayat office. Additionally, they are not aware of the provision of M.P. PESA Rules where the voters and/or chairman of Gram Sabha can call for a meeting.
7. During a visit to a village in Betul, the village had been notified as Gram Sabha and villagers weren’t aware of it. The villagers did not even know of the powers that have been vested in PESA rules. The notification process was done on their behalf by the PESA mobilizer and block coordinator. Spirit of PESA does not lie in simply notifying villages as Gram Sabha.
8. Chairmen of the Gram Sabhas (appointed as per PESA Rule), do not know their roles and responsibilities. On interaction with a few chairmen of Gram Sabhas and PESA Mobilizers, it was noted that the chairman of the Gram Sabha sits as a mere spectator in the meetings while the sarpanch and sachiv conduct the meeting. Chairman also complained that their topics are not taken into the meeting as they are not taken seriously.
9. Since implementation of PESA, there has been an increase in the number of villages that have filed for collection and disposal of Tendupatta. It was observed that only this provision of PESA has been highlighted in the villages by the political members of the panchayat. It was surprising to see that most people were unaware of the word “PESA” and other rights vested under PESA apart from rights over Tendupatta.
10. There have been no initiatives by the state to create mass awareness drives/camps in the villages. This is another reason for the lack of awareness in the villages.
11. In Paraswada Block of Balaghat District, it was noted that the Sarpanchs of the villages are not allowing meetings of the voters for notification of

Gram Sabha. There have been instances of dispute between sarpanch and residents of the village on the topic. It is obvious that the sarpanch does not want dilution of their powers therefore, they obstruct the voters' meeting to notify Gram Sabha.

12. It was found that Gram Sabhas under PESA seldom maintain proceedings books. Though the proceedings book is maintained at the panchayat level, there is no proper recording of the minutes of the meeting held at the Gram Sabha level.
13. Rule 17(3) provides for consultation before diversion of community land use, but the state has hardly recognized any community forest resource rights. Unless the right of Gram Sabha over community land gets recorded in the land records, this provision will remain futile.

4.4 Recommendations to the State of Madhya Pradesh

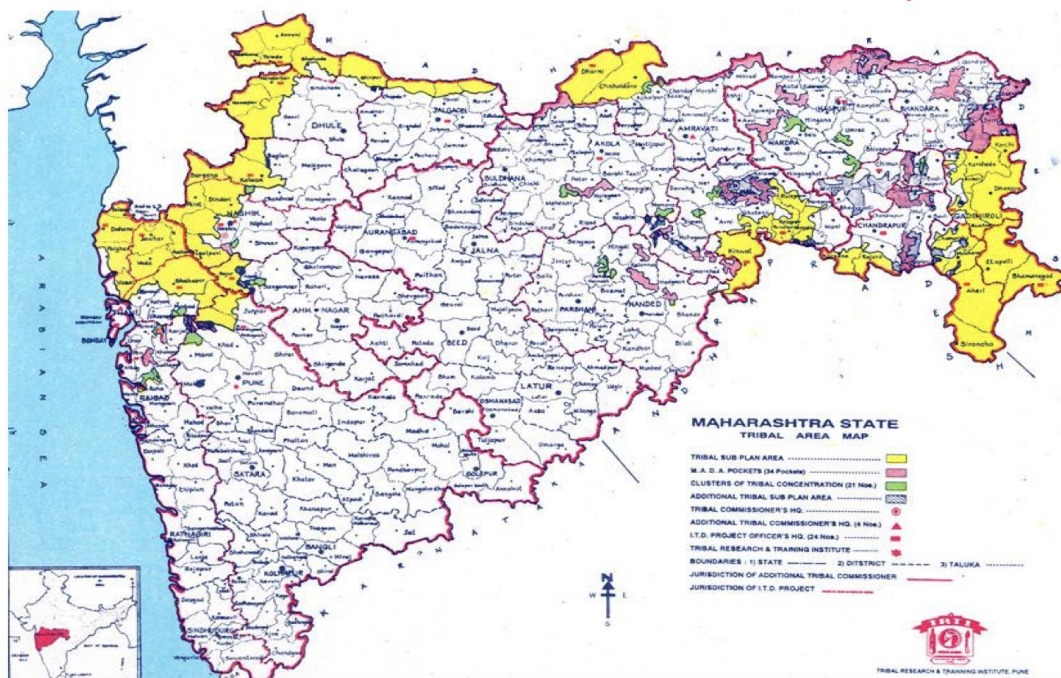
The State of Madhya Pradesh is recommended to take following actions for ensuring effective implementation of PESA:

1. Establish a PESA monitoring and capacity building cell at state level with officers from Panchayat Raj and Tribal Areas departments and independent experts. A post of PESA director may be created at state level taking cue from the Government of Maharashtra.
2. Amend the rules or notify through the Hon'ble Governor's office -
 - a. Notify the MP Tendu-Patta Act of 1964 as non-applicable to Scheduled Areas of the State.
 - b. Remove restrictions on MFP. Rule 25 must be amended to ensure that all MFP (as defined in Rule 2) is in the hands of Gram Sabha. It is retrograde to have provisions depriving Gram Sabha rights over Tendu and Bamboo (as in rule 26) and to restrict the rights to only a limited area/type of forest (as in rule 25) - and that too years after FRA was passed with unrestricted rights in this regard. Hence it would be prudent and constitutional for the state to amend rule 25 and 26 and thus vest Gram Sabha with full ownership rights over MFP.
 - c. Remove control of sale of Tendu from the hands of VFPMC. The VFPMC is controlled by its member secretary, an employee of the Forest Department. This could be hardly called endowing Gram Sabha or PRIs with the ownership of MFP.

3. Consider empowering Gram Sabha at habitation level with funds taking cue from Maharashtra where TSP 5% funds are transferred to Gram Sabha kosh as untied funds.
4. A Training team or wing dedicated for training of PESA mobilizers at district, block and village level shall be beneficial for PESA mobilizers for a better understanding of PESA in Gram Sabhas.
5. There should be a separate chain of authority for PESA Cell. PESA Cell of the state should directly take control over District Coordinator, Block Coordinator, and PESA Mobilizers that have been appointed especially for PESA work. This will change the reporting authority of the aforementioned officials and will enable them to work exclusively for PESA.



5. Maharashtra



The Legislative Assembly of Maharashtra passed some nominal amendments to the state Gram Panchayat Act in 1997 in order to meet the constitutional requirement of passing a legislation within one year of Parliamentary legislation. These amendments viz. Sec. 54A, 54B, and 54C added to the Maharashtra Gram Panchayat Act (III of 1959) were not

supplemented with rules and government resolutions. Thus it remained a piece of paper till March 2014 when the state passed its PESA rules.

Prior to 2014: The state laws were not in line with provisions of PESA. Minor Forest produce was tightly controlled by the Forest Department. Minor water bodies were often controlled by Departments, rather than PRIs. CFRR recognition was limited to a few districts and had almost no impact in the rest of the state. Law regarding land alienation was not in line with PESA. Local forest Acts were coming in the way of true democratization of forest governance.

Two consecutive Governors; namely K. Sankaranarayanan and C. Vidyasagar Rao issued notifications using their powers under the Schedule V of the constitution. The state rules of 2014 and these notifications - amending laws for scheduled areas - created an enabling environment for making PESA truly functional in the state.

5.1 Amendments by Governor

The Hon'ble Governor (HG) formed a Tribal Cell at Raj Bhavan in 2011-12. This cell was headed by an IAS officer of the rank of a deputy secretary assisted by two state service officers and office staff. This cell worked on the following points:

- Identification of legislation not in line with PESA
- Advocacy with Departments to bring change in rules and policies
- Follow up with District administration to expand FRA and PESA
- Secretarial help to departments when the issue of capability and time arose

The Tribal Cell at Raj Bhavan also performed many supportive functions; It monitored and trained PESA coordinators and FRA coordinators. It aided departments to improve delivery in scheduled areas. It tracked circulars, GRs, government guidelines etc. against the spirit of PESA or harmful to tribal interests and advised departments to withdraw them. The cell had regular interaction with civil society; through taking up local representations about violation of MFP rights and requesting Government departments to intervene.

The HG has powers under the Fifth Schedule of the Constitution to amend any law (state as well as central) in its application to Scheduled Areas. The initial aim of HG in using these powers was to bring laws in line with PESA.

5.1.1 Amendment to ensure GS ownership on MFP

MFP in general and Tendu-leaf and Bamboo in particular were under tight control of the forest bureaucracy. Even when recognizing CFRR claims, very few MFP rights were being given. Despite clear provisions in FRA, Bamboo and Tendu were not being allowed to be accessed, except for a few villages like Lekha Mendha - that had a strong support of CSOs. State monopoly on Bamboo and Tendu had continued. State forest laws had restrictive definitions of MFP. There were also restrictions on permit pass, disposal of MFP, sharing of proceeds from MFP etc. Further, the FD maintained that bamboo was a tree.

The Governor Amended the “Transfer of Ownership of MFP Act” by notification dated 13th Aug, 2014. This deleted earlier restrictive definition of MFP (only 33 MFPs, excluded Bamboo and Tendu). MFP was now defined ‘as defined in FRA’. The notification gave management powers to Gram Sabha and appropriate Panchayats. It also gave power of management plans to the Gram Sabha. PESA thus created a double-fencing in favour of people along with the FRA. HG - by the same notification amended Indian Forest Act, 1927 in its application to scheduled areas of Maharashtra and Bamboo was deleted from the definition of tree.

5.1.2 Amending the Forest Rules and TP regime

To further bring clarity on permit pass, and disposal of MFP and sharing of proceeds the HG inserted a whole new chapter in IFA (Chapter III-A) regarding Scheduled Areas. This amendment in IFA dated 30th October, 2014 stated:

- Transit permit shall be given by Gram Sabha
- All decisions for the collection, sale and sharing of proceeds from sale of MFP shall be done by the Gram Sabha

This had an immediate impact in resource rich areas of Vidarbha (eastern region of Maharashtra).

The forest department - first time since the IFA was passed in 1927 - brought up rules to declare village forests as per sec. 28 of IFA. The government during the colonial as well as post-independence seldom notified any forests as Village forests. Village Forest Rules (VFR) of Maharashtra proved to be a backdoor entry for the department to get control of forests being transferred to village communities. The VFR had a provision that it could be notified and de-notified as per the wishes of forest officers. This meant that rights would be eliminated when de-notifying a village forest. HG ruled that the VFR is against the grain of PESA and shall not be applicable to Scheduled Areas.

5.1.3 Control of GS on Land diversion

To strengthen land protection provisions in MLRC, Governor amended the MLRC by notification dated 14th June 2016. Earlier only sanction of Collector was needed to transfer land from tribal to non-tribal persons. In accordance with the provisions of PESA, the Notification stated that sanction could be given by Collector only after the previous sanction by the Gram Sabha.

Diversion of village commons is a very common process in peri-urban areas. The first loss of land usually is the commons. By 9th May 2017 Notification, Governor directed that no *Gairan* (village commons) grazing lands in Scheduled Area shall be diverted without the previous sanction of Gram Sabha.

5.1.4 Other amendments by Governor

By notification dated 5th November 2016, the National Food Security Act, 2013 was amended to: 1) Ensure daily hot cooked meal to pregnant mothers, 2) Eggs or suitable alternative based on preference as an additional item to children in Anganwadis, 3) All 'Take Home Ration' replaced by 'Hot Cooked Meal'.

By the 30th October 2014 Notification transfer of minor water bodies and fishing rights were given to Gram Panchayats concerned. This gave a source of income to Gram Panchayat led fishing in many areas. Local youth and groups could fish, since the big contractor element was out of competition.

5.1.5 Devolution of funds to Gram Sabha

PESA vests with appropriate Panchayats and Gram Sabhas the power to exercise control over local plans and resources for such plans including

tribal sub-plans; (See sec. 4(m)(vii)). This power has no meaning unless the Gram Sabha has some hands-on untied funds.

The HG - by notification dated 30th October 2014, amended the state Gram Panchayat Act to ensure that 5% funds of TSP will be transferred directly to Gram Sabhas. These are not Panchayat Gram Sabhas but Gram Sabhas of villages as defined in PESA.

5.2 Primary Data Findings

The previous section has elaborated the policy level measures taken by the Governor and the government. Despite such positive measures, the research team found in its field investigation in four districts that the implementation was very weak rather dismal.

The team investigated in four districts; viz. Nashik, Amravati, Yawatmal, and Palghar.



Image 3: Focused Group Discussion in Nashik district of Maharashtra.

Following are the key findings:

5.2.1 Gram Sabha notification at minimal

State PESA rules define a hamlet or a group of hamlets as village depending on what the people propose i.e., voters in a hamlet/habitation may write a proposal with a hand-drawn boundary map declaring their hamlet/habitation as a village. Whether single or a group of villages depends on whether people comprise a natural community with a habit of coming together to solve problems or make celebrations. The pre-requisite for a village to be notified as a village - is people (voters) writing

and submitting the proposal. The government did not take up any IEC or awareness drive to ensure all remote hamlets and unrecorded villages know this provision. The survey conducted by tribal youth volunteers for this research team - in 200 villages of Seven districts - found that there was zero awareness about the rule to write proposal for self-declaration of a village.

The research team through its interaction with the officials looking after PESA training at the SIRD⁸ at YASHADA found out that the training content did not even mention the process of writing a self-proposal for village notification.

Government i.e., the Rural Development Department (RDD) to meet the requirement of getting villages notified - for the purpose of transferring TSP 5% funds - asked ZP of all districts to report all revenue villages as PESA villages. Since revenue villages are already on record and also have a separate census profile, it was easy way out for the government to get these villages notified. This however defeated the purpose of PESA - of recognising the already self-ruling village assemblies that existed in hamlets. Revenue village is basically a land record unit and does not 'comprise a community' as defined in PESA.

5.2.2 Built-in self-stoppages

The state system for reaching villages had built-in self-stoppages. The RDD reached through the PRIs. The smallest unit in PRI is the Gram Panchayat, which saw empowering hamlet Gram Sabhas as a threat to its power. The intermediary level Panchayat i.e. Panchayat Samiti bureaucracy saw hamlet Gram Sabhas as an additional work-load to be managed with limited HR. Both these levels and their positional attitude to PESA could defeat the rules simply by not reaching out to hamlets. None of the ZP-CEOs interviewed by the research team could assure that every hamlet in the district knew the village notification process in rule 4.

5.2.3 No Gram Sabha meetings in villages

The research team asked the Gram Panchayat secretaries for proceeding registers of each village Gram Sabha in that GP. There were no such registers in any Panchayat; because they never held a separate

⁸ SIRD: State Institute of Rural Development

Gram Sabha meeting for each village. This was fundamental violation of PESA sec. 4(c) which says: every village shall have a Gram Sabha.

The GP secretaries have continued to hold a single Gram Sabha meeting for all the villages in the Panchayat. The monitoring offices; i.e. ZP and PS have never raised any enquiry about this violation.

There is a provision of holding joint meetings of Gram Sabhas at the GP, but it is with the condition that there must be an issue or matter that requires working with other Gram Sabhas. Read rule 13 (1):

Every Gram Sabha shall be competent to execute its functions in its jurisdiction:

Provided that, in matters in which working with other Gram Sabhas is required, a joint meeting of all Gram Sabhas falling under the jurisdiction of the Panchayat shall be conducted.

This was not the case of Gram Sabha proceedings observed by our team. It was simply like a Gram Sabha of non-scheduled area, as if PESA did not exist.

5.2.4 Invalid President of Gram Sabha

Rule 9(1) of state PESA rules and sec. 54C(3) of MGP Act 1959 clearly mention that Sarpanch or Upsarpanch or a member of GP are disqualified from being Presidents of Gram Sabha meetings except the first meeting of each financial year. The research team found that in all Gram Sabha recorded proceedings, Sarpanch is presiding over all the Gram Sabha meetings.

This violates the parliamentary democracy principle of keeping the heads of legislature and executive separate. The checks and balances in a democracy, which our constitution has adopted at state and union level, is negated at village level.

Similarly, sec. 54C(1) of MGP Act 1959 provides for an alternate secretary that can be appointed by the president of Gram Sabha in case GP secretary is absent. This provision - that can reduce work load on the GP secretary - has never been used.

5.2.5 Miscalculated Quorum of Gram Sabha

The proceeding registers of Gram Sabha observed by the team had 105 or 108 signatures in most meetings. When enquired, the secretary told us that 100 was the required quorum under PESA. The rule about quorum is: *9(3) The quorum of the meeting of the Gram Sabha shall be twenty-five per cent. of the total members or one hundred, whichever is lower.*

This means the GP secretaries are misinterpreting the rule or have misunderstood it. This was the case even in villages which had a smaller number of voters.

Since the Gram Sabha was at GP level - and although there was no mention of 'joint' meeting - if it were assumed to be so, the quorum requirement was not met. The quorum for such meeting is explained in rule 13(4):

(4) In the joint meeting, attendance of a minimum of twenty-five per cent., members from each Gram Sabha or one hundred members from each Gram Sabha, whichever is lower, shall be mandatory. In case there is no quorum, the date of next meeting shall be finalized on the same day and the same shall be sent to all Gram Sabhas.

When verified with villagers present during the review, the villagers told that voters from their respective villages attending the GP Gram Sabha was far lesser than 25% of total voters. The villagers also pointed to fake signatures in the proceeding registers.

5.2.6 Misunderstanding of PESA in PRI administration

The research team found that the BDOs, GP secretaries, Extension officers, and even the CEOs consider Gram Sabha of a PESA notified village (i.e. hamlet) as a sub-ordinate meeting to what they call 'Original' (or *Mool*) Gram Sabha that they claim is to be held at the GP office. We have come across respondents in all these official categories - who have two Sabhas in mind -PESA Gram Sabha and Main Gram Sabha. They are not aware that there could be only one Gram Sabha at a time. Once defined clearly by the PESA Act and rules, an erstwhile GS at the GP level is now a divided into two or more separate / independent houses. The powers of decision making vested in the Gram Sabha of a Pada (or a newly

notified PESA village) can not be usurped by meeting of villagers in another village or in Panchayat office.

The officers believe that the Gram Sabha in hamlet is notified only for discussing the TSP 5% fund. The state government has not made its officers aware that once a Gram Sabha always a Gram Sabha. That whenever the word Gram Sabha appears be it in a law or in a government circular or in guidelines of a scheme - it shall always mean a Gram Sabha constituted at the hamlet level as per PESA rules. The 73rd amendment made it clear that a separate legislation shall be passed for applying Panchayat Raj to Scheduled Areas. This meant that definitions of a Gram Sabha in PESA shall always apply to every government action in the scheduled area.

The guidelines regarding GPDP⁹ for planning and use of funds under 15th Finance Commission mentioned that there shall be separate Sabhas in hamlets and then an integration at GP shall follow. The guidelines issued by the Ministry of Panchayat Raj on 04/04/2016 say:

...In Fifth Schedule Areas, it is the Gram Sabha and not the Gram Panchayat that has been empowered not only to identify or select beneficiaries of government programmes, but also to exercise control of over social sector functionaries and issue utilisation certificates to GPs. In addition, approval of plans, programmes and projects to be undertaken for implementation within the PESA village by the Gram Panchayat should vest with the Gram Sabha. How this can be operationalised within the larger ambit of decentralised planning at GP level needs to be clearly articulated in the guidelines.

...In Fifth Schedule Areas, essentially an extra tier of participatory planning would be added. The plans would have to be prepared at each village (habitation or group of habitations as notified by State) level and then consolidated at GP level as GPDP.

(paragraph 3.1.2)

⁹ GPDP: Gram Panchayat Development Plan

The consolidation mentioned in the quoted paragraph means an administrative consolidation at the GP of the plans / programmes / projects passed by the hamlet Gram Sabhas. The PRI officers wrongly interpreted this as a PESA Gram Sabha in the hamlet and then again a consolidated 'Main' Gram Sabha at the GP. When a voter in a hamlet is a member of one house i.e., Gram Sabha, the same person can not be a member of another house i.e., Gram Sabha held at Panchayat officer for the villages that are not notified as separate Gram Sabhas. Hence the domain of two Gram Sabhas is equal and separate. This is not understood unfortunately by any official that the research team came across.

5.2.7 Ineffective Devolution of Funds

The research team found following major issues with devolution of funds to the Gram Sabha:

- a) Gram Sabha Kosh accounts were not separated till recently (i.e. 2021) in some districts, while others have not separated even now. Thus they had a single Kosh account for entire GP keeping the control centralised in the hands of Sapanch and secretary. No devolution at all.
- b) When separate Gram Sabha Kosh accounts were opened (as in Nashik district in 2021), the Gram Kosh committees were elected in the Gram Panchayat meeting. No separate Gram Sabha meetings were conducted even to elect the committees.
- c) TSP 5% fund not utilised properly. The Government had issued guidelines with do's and don'ts about utilising the funds. It was expected that each Gram Sabha (i.e. habitation) gets a fare share of works in proportion to its ST population. Many habitations have remained deprived. The guidelines specified four categories of works, with equitable spending on each category. This is commonly violated.
- d) The rules expect that the GP shall obtain a Utilisation Certificate from the Gram Sabha. Throughout all the GP records examined by the research team, no UC was obtained from Gram Sabha. The Gram Sabha is also the authority to give Technical Sanction to works up to ₹ Three Lakhs. No TS was ever taken from Gram Sabha.
- e) The team found - in Amravati district - that the TSP 5% fund was spent only on two categories out of four. The never attended

categories were: B) Awareness and implementation of PESA and FRA, D) Forest related activities i.e. forest based livelihoods, forest regeneration etc. It was expected - as per state guidelines about funds - that 50% fund should be spent on these two categories. The actual expenses have been ZERO for six years. When enquired, an extension officer told the team, “the fund for these two categories is to be transferred either to CFRMC or NRMC of the Gram Sabha. None of these committees have any government employee. How could we trust the people with government funds?” Thus the purpose of devolving a minor fund to people was defeated by ‘concerned’ bureaucrats.

5.2.8 Orphaned implementation

Sadly, PESA is nobody’s child. The state created a post of PESA director, but it remained vacant for six years. Currently, the director does not have enough staff to monitor the implementation in the state. The director is from the Rural Development / Panchayat Raj cadre and has his office in Tribal Research Institute of the state.

The TSP 5% fund is handed over by TDD to RDD and TDD never asked the RDD for any account or audit of the funds. The RDD apparently has treated this fund as never-to-be-enquired-into fund. The Governor’s office asked the TRTI to conduct a review of implementation. This review was conducted without appointing any independent experts and by merely seeking questionnaires filled by RDD officers and staff.

The research team asked the BDOs of districts visited about how they monitored the spending of TSP 5% fund. They had no answer. They had no reports from Panchayats. They never enquired why there were no separate Gram Sabhas for each village, why there was no separate Gram Kosh, why the fund was spent depriving some habitations.

5.2.9 Lack of human resource

PESA is a law without a dedicated agency or cadre to implement it. Block and District coordinators appointed under the RGSA were termed as PESA coordinators for some time. But their appointment is not for PESA.

At the village level, there are women from SHGs appointed as PESA mobilisers and are paid a monthly honorarium. But no real work is assigned to these village mobilisers. The research team observed in

interviews of mobilisers that they had a good initial training about PESA, but had no handholding support or on-job training. It was observed that the report book of mobiliser was full of visits to Anganwadis mentioning awareness about malnutrition as the work done. This could hardly be called PESA mobilisation.

5.2.10 No training of key officers

The ZP-CEO and SDM (both IAS officers) are not trained in PESA. The CEO is responsible for overall monitoring of PRIs and must know the constitution and rights of a Gram Sabha under PESA. The CEO depending on learning from sub-ordinate officers - who again lack understanding of PESA - is weakening the implementation.

The SDM is responsible for primary verification of a proposal to form a new Gram Sabha. He/she must have an understanding of sec. 4 (b) of PESA:

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

The officers to understand 'community' and 'managing affairs' need an elaborate orientation by experts with extensive experience of working with tribal communities and their traditional systems.

The state has no system of training officers in this role; especially when it is their first posting in a scheduled area.

5.3 Recommendations to the State of Maharashtra

The State of Maharashtra is recommended to take following actions for ensuring effective implementation of PESA:

1. Establish a PESA monitoring and capacity building cell at state level with officers from Panchayat Raj and Tribal Areas departments and independent experts. The post of PESA director must be strengthened with adequate staff and resources.
2. Conduct a third-party assessment of the implementation of PESA as well as of transfer of TSP 5% funds to Gram Sabha kosh.
3. Create an action plan for the state to reach out to all the tribal hamlets and habitations and make them aware that there are provisions to

empower them with a separate Gram Sabha. A high percentage of such villages remains in darkness after 8 years of state rules.

4. Identify and publicise success stories of PESA Gram Sabhas; e.g. Gram Sabhas in Jawhar block of Palghar district empowered by CSO Vayam for inspiring villages all over the state.
5. Amend the rules or notify through the Hon'ble Governor's office -
 - . Certain percentage (say 5%) or certain number (say 25) of voters in a Gram Sabha must be able to demand and convene a special meeting of Gram Sabha. A cue may be taken from recently notified PESA rules of MP.
 - a. Recognise Gram Sabha of a notified PESA village clearly as a body incorporate with its seal and continued existence. (Refer to PESA rules of MP.)
 - b. Share or fully vest the royalty of minor minerals with the Gram Sabha. Take cue from PESA rules of Himachal Pradesh. Empowering Gram Sabha with its own sources of revenue shall ensure lesser dependence on state for all basic development needs.
 - c. Increase the percentage of TSP funds transferred to the PESA Gram Sabha.
 - d. Clarify that the TSP fund is to be deposited in Gram Sabha Kosh accounts and not in GP accounts and that the fund is to be utilised by the Kosh Samiti and not by the GP.
 - e. Amend the TSP 5% Untied Funds guidelines to make the funds truly 'untied'. The current guidelines put too many Don'ts for a Gram Sabha to use the funds effectively. Some reasonable don'ts e.g. not to spend funds on decorative works may continue.
 - f. Provide adequate support to GS for statutory audit of these funds.
 - g. Withdraw state and district level orders regarding some specific use of Untied funds of GS on certain schemes e.g. Amrut Aahar. This fund must remain untied and wholly at the discretion of GS.
6. Develop people-friendly local language manuals in booklet form as well as in interactive mass-media on "how to spend government funds" i.e. how to get quotations, issue tender, make payments, keep receipts, records etc.
7. Conduct proper training of ZP CEOs and SDMs ensuring they know the following points:

. There are no two entities like PESA Gram Sabha and Main Gram Sabha. There is only one Gram Sabha for one territory. When a village is notified, the Gram Sabha of this village becomes an independent entity and its powers cannot be usurped or superseded by the Gram Sabha of remaining villages at Panchayat level.

a. The Gram Sabha of a notified village has all the powers that a GS under Gram Panchayat Act has and additionally it has powers given by PESA. It is not a subsidiary of Gram Panchayat like ward sabha.

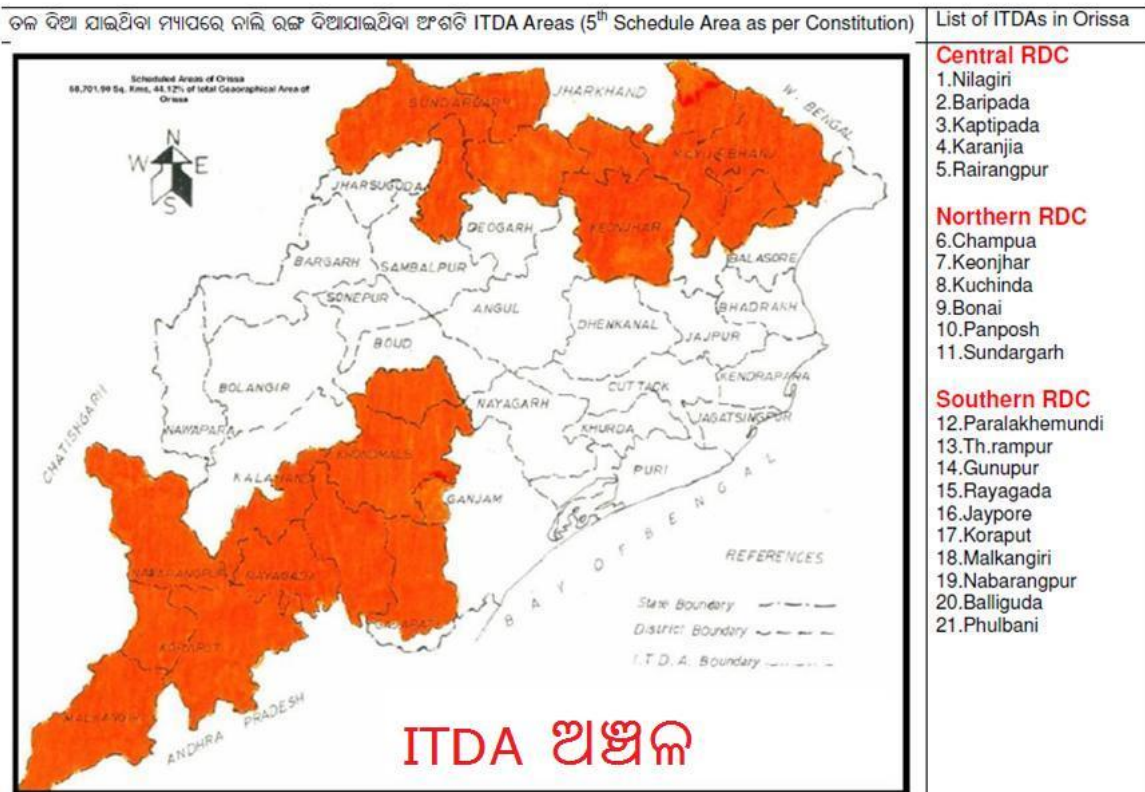
b. The GS of a notified village can plan programs, schemes, select beneficiaries for not only the TSP 5% fund but for all the funds that the Gram Panchayat has at its disposal. Hence the Gram Panchayat must inform each GS within its jurisdiction of its share (as per population) in all the funds of Gram Panchayat and seek proposals for works.

c. Voters in any hamlet or group of hamlets are the sole authority to decide whether they are a 'community managing its affairs' and what their traditional boundaries are. The verification to be conducted by SDM is only regarding the genuineness of the meeting (of voters) held for proposing the notification of a new village.

d. The Gram Sabha in PESA and FRA are one and the same in definition. In fact, FRA borrows the definition of village from PESA. Hence PESA and FRA can not confront each other. If a CFRR holder Gram Sabha is holding Tendu auction, it can not be contested or countered by Gram Panchayat in doing so.

e. Well documented Gram Sabha proceedings is the key to making Gram Sabha meaningful. Hence separate records for each Gram Sabha and soliciting of UC from notified Gram Sabhas must be ensured by district authorities.





Credit: Wikicommons, https://en.wikipedia.org/wiki/File:Map_of_5th_Schedule_Areas_of_Orissa.jpg

6.1 State Summary

The state is unique on two points; having separate Acts for all three levels of Panchayats and having an institution called Palli Sabha. Some other states also have separate acts for Village Panchayats and the two upper tiers of PRI, but Palli Sabha is unique. This Sabha is expected to be an assembly of voters in a revenue village. Even if there are multiple hamlets/villages in a revenue village, there can be only one Palli Sabha. This Sabha interestingly has no decision-making powers. It can only make recommendations (Sec. 6(6) of GP Act). Voters while they already are members of Grama Sasan (Gram Sabha) - that is supposedly the decision-making body - have no reason to sit in a Palli Sabha again as members. The institution of Palli Sabha has a built-in ineffectiveness. It is neither at the level of a traditional tribal village assembly nor at the legally empowered level.

The state Grama Panchayat Act 1964, proviso to sec. 3(1) says that ‘in Scheduled Areas a Grama shall consist of a habitation or group of habitations comprising of a community managing its affairs in accordance with traditions and customs’. It does not provide any process for how this

shall be ascertained and such Grama be notified. In fact, sub-section 4 of sec. 3 renders this proviso ineffective by saying No Grama shall be constituted for a population of less than 2,000. This effectively means that even if there is a group of habitations managing its affairs customarily, they would not be notified a Grama if their population is smaller. As a result of such provisions, Odisha has never notified a hamlet or group of hamlets as a Grama.

The research team visited villages and noted that traditional village assembly was functional. A group of Pada (hamlet) comes together for customary dispute resolution and for pre-sowing and post-harvesting festivals. The festivals have assemblies where village commons are discussed. The customary dispute resolution assembly comprises of all castes and tribes in the village. The village has a system of notifying all villagers of a village assembly meeting. They have person appointed as a 'Behra' who roams through the village announcing the meeting. This person is paid in terms of grain or rupees annually by the village. All households contribute equally to the village common fund. All transactions through this fund are known to all people. This group of hamlets is an example of what is defined as village in PESA. A Grama Sabha must be notified at this level. But the state has not taken any steps towards this.

The state in its draft PESA rules (notified on 10/11/2023) appears to be against rather than favour constituting a Gram Sabha at hamlet/habitation level. See for instance Rule 3(1) in the draft rules. The construct "If at any time it appears to the state government that a separate Grama is to be constituted" is defeating the definition of a village in PESA sec. 4(b). Whether 'a settlement/habitation/hamlet or a group thereof comprises of a community with customs of managing its own affairs' can be decided only by the villagers. Hence, whether a village is to be constituted should be based on a proposal by voters in a habitation. Like Maharashtra rules, there should be a time limit on the State authorised officers to notify a village once so proposed by voters in the village. [Kindly refer to Maharashtra PESA rules (Rule 4) and Madhya Pradesh PESA rules (Rule 3) for such procedures.]

The discretion of state as in this rule, also denies the constitutional rights of each village to have a Gram Sabha as per Art.243(b) of the constitution: "Gram Sabha" means a body consisting of persons registered

in the electoral rolls relating to a village comprised within the area of Panchayat at the village level” Read this with PESA Sec. 4(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 Gram Sabha as in the state GP Act has a quorum of 10% voters. If a GP has many revenue villages consisting of many Pada/Tola - as the ones the research team visited - it is little likely of people from 5 to 7 km from the GP office to attend a Grama Sabha meeting. If a quorum is not fulfilled, the Grama Sabha can meet later and shall have no requirement of quorum. (Sec. 5(2)(b)) This deprives Grama Sasan or Grama Sabha of its powers. The FRA and the RFCTLARR has restrictions for certain sensitive subjects where a Grama Sabha without quorum is not acceptable. But the GP Act does not provide any such exception. This means Panchayat office bearers can take any decision on behalf of the Grama Sasan. It is not surprising that the research team found villagers to be completely unaware of GPDP.

The state has territorially large Gram Panchayats with villages located at long distances. One GP secretary often has the charge of two or more Panchayats. It is impossible for one secretary to attend/facilitate all Gram Sabha meetings. The state has no provision for an alternate secretary. But interestingly field interactions reported that other junior staff in the Panchayats do the Gram Sabha proceedings and other secretarial roles; though they have no legal authority. Unavailability and consequently inaccessibility of functionaries is a major inhibition for effective Gram Sabha functioning.

6.2 Analysis of State Draft PESA Rules

As published by notification [PR-PADM-MISC-0081-2021/25781](#) Dated 10/11/2023

Rule no.	Comment on the draft Rule
Rule 2(g)	<p>The definition of “Minor Forest Produce” should be as per sec. 2(d) of the Forest Rights Act which is “<u>minor forest produce</u> includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;”</p> <p>This definition is already applicable to entire country including scheduled areas. Any conflicting or deviating definition shall not stand.</p>

Rule no.	Comment on the draft Rule
	[Refer FRA definition of MFP used in Chhattisgarh PESA rules Rule 2(4) or MP Rules Rule 2(1)(c), or Rajasthan Rule 2(1)(iii)]
Rule 2(h)	Definition of minor water bodies may be reconsidered to extend to 100 hectares of land irrigated. This is comparable to rules of other states like Maharashtra.
Rule 2(l)	Definition of “village” must be the same as in PESA sec. 4(b)
Rule 3(1)	<p>The construct or words “If at any time it appears to the state government that a separate Grama is to be constituted” is defeating the definition of a village in PESA sec. 4(b). Whether “a settlement/habitation/hamlet or a group thereof comprises of a community with customs of managing its own affairs” can be decided only by the villagers. Hence, whether a village is to be constituted should be based on a proposal by voters in a habitation. Like Maharashtra rules, there should be a time limit on the State authorised officers to notify a village once so proposed by voters in the village. [Kindly refer to Maharashtra PESA rules (Rule 4) and Madhya Pradesh PESA rules (Rule 3) for such procedures.]</p> <p>The discretion of state as in this rule, also denies the constitutional rights of each village to have a Gram Sabha as per Art.243(b) of the constitution: “Gram Sabha” means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level” Read this with PESA Sec. 4(c) “<u>every village shall have a Gram Sabha</u> consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level”</p>
Rule 4	<p>When Grama Panchayat is declared as the “Executive Authority” of Grama Sasan, it is necessary to separate the “Legislative Authority” of Grama Sasan. Separation of legislature and executive is a principle adopted by our constitution.</p> <p>Hence “Sarpanch shall be the chairman of Grama Sabha” must be changed and a provision like: “President of Grama Sabha shall directly elected by voters present in a Grama Sasan meeting preferably by consensus. And the Sarpanch or Up-Sarpanch or GP members are disqualified from presiding over the Gram Sabha.” [Refer to Rule 9 of Maharashtra PESA rules or Rule 4(2) of M.P. rules or Rule 7(2) of Chhattisgarh rules for alternate provisions]</p>

Rule no.	Comment on the draft Rule
Rule 5	<p>Sub-rule (1) says “The Grama Sabha shall have the power of supervision and control...” but the rules do not explain how this power shall be exercised and what penalty shall cause if Gram Sabha power is violated by the Panchayat or other agencies.</p> <p>The subjects under the sub-rule (1) include, for instance, “vii. Consultation with Panchayat Samiti for required assistance...” The rules do not mention what will happen if the Panchayat Samiti does not provide the assistance.</p> <p>Or “xi. Ensuring that the Departments of State Govt give relevant information...” What action is the Gram Sabha empowered to take against a state department if it does not provide information?</p> <p>Or “viii. Ensuring that the Grama Sabha furnishes certificate of utilisation of funds in time...” How is Gram Sabha supposed to supervise Gram Sabha? What if construction work by an agency is not complete or not done satisfactorily and the Grama Sabha decides to hold back UC?</p> <p>This needs to be redrafted as “No funds shall be released unless Gram Sabha issues a utilisation certificate of the previous funds.”</p> <p>Sub-rule (2) makes an exception for Fair Price Shop by Grama Panchayat. There is no reason to make this exception, which contradicts sub-rule (1)(iv).</p> <p>While Sub-rule 1 speaks of Powers of Gram Sabha, Sub-rule (3) says “The Sarpanch shall have <u>the power...</u>”.</p> <p>This must be changed to “The Sarpanch shall <u>perform the duty to issue instructions to concerned authorities as per every resolution passed by the Grama Sabha</u> and every such instruction shall be placed <u>before the Grama Sabha</u> in its next meeting.”</p>

Rule no.	Comment on the draft Rule
Rule 6	<p>Sub-rule (1) says “Land Acquisition officer shall consult the Grams Panchayat...” while PESA Sec. 4(i) mentions “Gram Sabha or Panchayats at the appropriate level shall be consulted before making the acquisition of land”</p> <p>The PESA is clear that Grama Sabha is the first option. Where Gram Sabha is not constituted, the GP may be consulted.</p> <p>Land Acquisition is done with least trouble when the affected persons are directly taken in confidence by the agency involved. This can be done only through Grama Sabha where all the voters - including potentially project-affected persons - are present. Hence this must be changed from “Grama Panchayat” to “Grama Sabha”</p> <p>Sub-rule (2) may be deleted once sub-rule (1) replaces GP with Grama Sabha.</p> <p>The provision in sub-rule (2) must be removed: “... in case of urgency and if it is not possible to convene the meeting of Grama Sabha... the Sarpanch may place matter before the GP for a decision...” This provision is unjust and ridiculous, because loss of land is a very sensitive matter for any farmer and hence Gram Sabha meeting can be and must be convened even if it is urgent. There can be no bypassing the Grama Sabha in matters of land acquisition.</p> <p>Also, a reference may be made to RFCTLARR 2013 Sec.40 regarding “special powers to acquire land in case of urgency”. This section specifies a limitation on the case of urgency in sub-section 2: “(2) The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament”</p> <p>Keeping in spirit of this provision in RFCTLARR, the provision in rule 6(2) must be removed.</p> <p>Sub-rule 4 and 5 unnecessarily complicate the communication by involving Sarpanch and ZP. The communication should be straight between Land Acquisition officer (LAO) and the Gram Sabha. In case of a disagreement between LAO and the Grama Sabha, there should be one more consultation with the latter disclosing recommendations of the Grama Sabha that could be accepted and that could not be.</p> <p>Sub-rules 2 to 7 must be removed and re-drafted keeping in the principle that the dialogue should be straight and with at least two rounds of negotiations. [Refer to Rule 26 of Maharashtra PESA rules or Rule 9 of Himachal Pradesh rules for alternative draft.]</p>

Rule no.	Comment on the draft Rule
Rule 7	<p>This does not mention any size of minor water body that shall be managed by Gram Sabha.</p>
Rule 8	<p>Minor minerals and grant of mining lease. Sub-rule 1 says “the ZP shall seek advice of the Grama Sabha before recommending a case for... license or lease”, Sub-rule 2 says “the GP after consultation with Gram Sabha shall forward its approval or rejection...”</p> <p>These provisions fall short of clarity as to whether the recommendation of Gram Sabha is mandatory and binding. PESA Sec. 4(k) and (l) clearly mention that <u>prior recommendation of Grama Sabha is mandatory</u> for ‘grant of prospecting licence or mining lease or grant of concession for the exploitation of minor minerals by auction’</p>
Rule 9	<p>Control over intoxicants:</p> <p>The provision in sub-rule (3) is very friendly to liquor manufacturers: “Provided that if the concerned Gram Panchayat fails to communicate the decision of the Gram Sabha within the stipulated period of thirty days, it shall be <u>deemed that the concerned Gram Panchayat has accorded its approval.</u>” This leaves a big possibility that by simply delaying the Grama Sabha decision, the Sarpanch can help a new liquor shop or production unit open in the Grama.</p> <p>The state should consider a reverse provision that “If the Grama Sabha does not arrive at a decision or does not consider the proposal, then the proposal for a new liquor shop or production unit shall <u>be deemed rejected.</u>” [Refer Rule 14(3)(c) of Himachal PESA rules or Rule 39(5) of Maharashtra rules for an alternate provision.]</p>
Rule 10	<p>Prevention of alienation and Restoration of land:</p> <p>The regulation 2 of 1956 has protective provisions regarding this. However, PESA requires that land records must be presented before the Gram Sabha every year. This presenting of records provides knowledge to the Gram Sabha about alienation.</p>

Rule no.	Comment on the draft Rule
<p>Rule 13</p>	<p>The rule mentions that Ownership and disposal of minor forest produce shall be as per provisions of the Odisha Grama Panchayats (Minor Forest Produce Administration) Rules, 2002.</p> <p>The referred rules give all powers over MFP to Grama Panchayat. The rules define MFP in rule 2 and give a list in Schedule. This list excludes Bamboo and Tendu/Kendu.</p> <p>This provision is retrograde; and especially so after the Forest Rights Act 2006 that gives all powers over MFP to Grama Sabha and not to a Panchayat. The definitions of FRA and its provisions are applicable all over the country including the scheduled areas. Contradictory provisions shall not prevail.</p> <p>Hence, this rule must be re-drafted mentioning the ownership and disposal rights in the hands of Grama Sabha.</p> <p>[Refer to Rule 41 of Maharashtra PESA rules for alternate draft.]</p>
<p>Rule 14</p>	<p>This rule speaks of the Role of Gram Sabha in maintaining peace and dispute resolution. It has missed the fact that customary mode of dispute resolution (See PESA Sec.4d) in a tribal village does not begin or involve a Sarpanch. The tribal village usually has an assembly of men and women facilitated by the elderly in the village to solve disputes.</p> <p>This customary institution can be best aligned by formation of a Dispute Resolution Committee of the Grama Sabha having a chairperson (other than Sarpanch or GP members).</p> <p>The local police informally take help of such village elders in many cases. This can be institutionalised by police having a communication with this Committee.</p> <p>[Refer to Rules 18 and 19 of Maharashtra or Rule 14 of Madhya Pradesh PESA rules]</p>
<p>Rule 16</p>	<p>Sub rule (1) is giving near absolute powers to Sarpanch to bypass the Grama Sabha. The Sarpanch being the chairman of Grama Sabha itself is a violation of the constitutional principle of checks and balances. (This is explained in the comment on Rule 4.)</p> <p>The rule does not define what is ‘short intervals’; it is completely at the whim and fancy of the Sarpanch.</p> <p>Sub rule (2) does not give any time limit. The rules do not mention any minimum required number of Gram Sabha meetings, nor their frequency.</p> <p>Sub rule (3) says “Where the Sarpanch finds that the provisions of these rules come in conflict with any other rule or rules, he may refer the matter to the Collector for a decision.” This is principally incorrect, because any legislations or sub-legislations or provisions inconsistent with PESA stand repealed (See Sec. 5 of PESA).</p>

Rule no.	Comment on the draft Rule
	Hence, Rule 16 should be entirely deleted.
Rule 17	Appealing against a Gram Sabha or GP decision to the Divisional commissioner is out of capacity of an ordinary villager. There should be a provision for first appeal that can be made to SDM or Sub-collector. Later a second appeal may be preferred to the DivCom.

6.3 Primary Data Findings

1. During our field investigation, we found that communities continue to follow their traditional system of governance especially for matters related to use of forest resources and for conflict resolution.
2. Most people are weary of going to Gram Panchayat meetings, because they feel nothing of consequence is discussed in the meetings.
3. A single Gram Panchayat has more than one revenue village. Each revenue village has multiple traditional villages/hamlets. The draft Rules have failed to decentralise powers to the people as they have not made any provisions for a community to define their own village and take their own decisions.
4. The sale of Tendu patta is still controlled by Forest Department. The PESA draft rules fail to empower Gram Sabhas and give them control of a major MFP. This not only violates PESA Act but also FRA.
5. Rule 14 says that disputes should be brought to the Sarpanch. But in our field investigation we recorded that communities have their own traditional and democratic procedure of conflict resolution. The state failed to recognise the customs of tribals. The rule also violates PESA section 4(d).

6.4 Recommendations to the State of Odisha

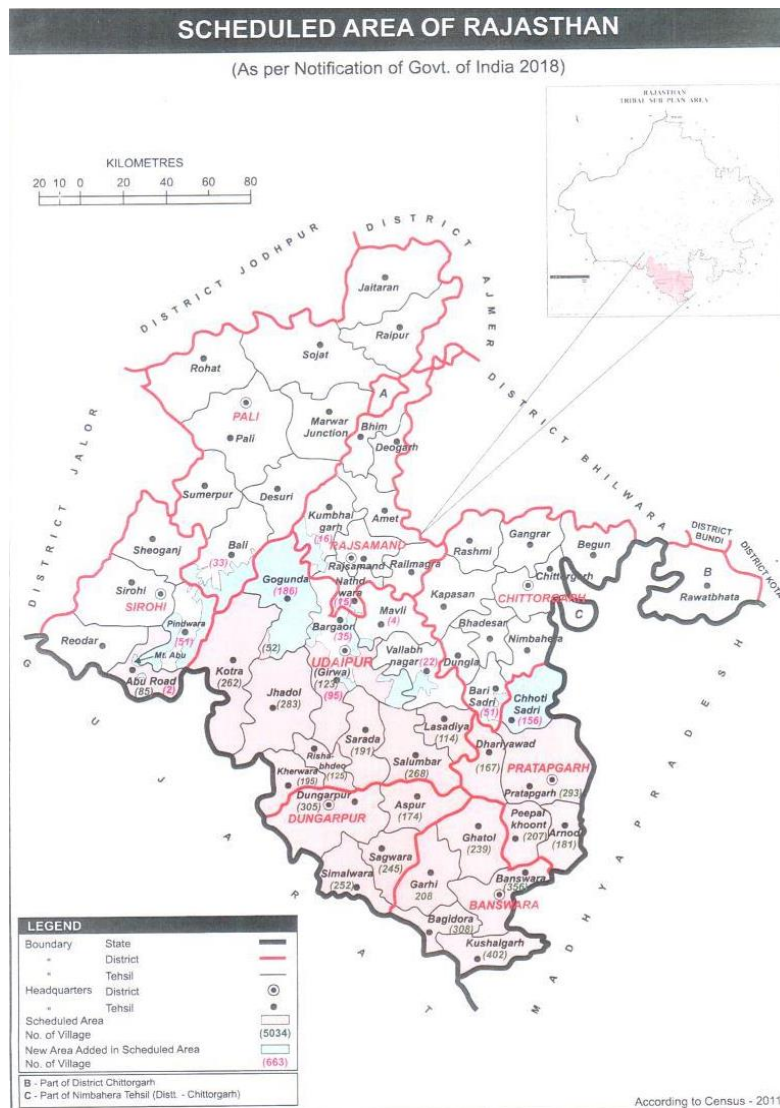
1. The draft Rules lack provision for a community to initiate the process of notification of their own Gram Sabha. The rules should be changed to effectively implement PESA section 4(b) and (c).
2. The draft Rules should provide for a Gram Sabha to own, control and dispose MFPs as they deem fit and in accordance with PESA and Forest Rights Act.
3. The Rules need to be altered to give legislative powers to a Gram Sabha of not a revenue village but of a natural village, a village managed by a community as per their traditions, as per PESA Act.
4. The Rules need to adapt such that the Gram Sabha and not Gram Panchayat controls and manages their Grama fund.

5. As per Section 5 of PESA all existing legislations such as The Orissa Grama Panchayats (Minor Forest Produce Administration) Rules, 2002, Odisha Grama Panchayats Act, 1964, Odisha ZillaParishad Act, 1991, need to be amended such that they are in consonance with the PESA Act.
6. In the case of control over production of liquor, the Gram Sabha should meet before the Sarpanch proposes it to the Collector. The proposal should be given to the Collector after approval of the Gram Sabha. And a clause should be added that, if the Grama Sabha within stipulated time does not communicate its decision, then the proposal should be deemed rejected.
7. In cases of land alienation, restoration and acquisition, Gram Sabha consent needs to be made mandatory. Himachal Pradesh provides model rules for this.



7. Rajasthan

Image
Bhawan,
website



<https://rajbhawan.rajasthan.gov.in/content/rajbhawan/en/tribalwelfare/msar.html>

7.1 State Summary

Rajasthan made some amendments to its Panchayati Raj Act as Modifications of Provisions in their Application to the Scheduled Areas (Act 16 of 1999). It also had framed rules in 2002, which were repealed when Rajasthan's PESA (Panchayats Extension to the Scheduled Areas) rules were notified in 2011.

The state has eight districts, 55 blocks, and 5696 villages in the Scheduled Area. The State has conducted orientation programs (आमुखीकरण) on PESA in all the districts at 544 locations covering 1620 Gram Panchayats.

The State has amended certain laws for Scheduled Areas in order to comply with PESA. The Rajasthan Moneylending Act 1963 is amended recognizing the GP as assistant registrar, PS as registrar, and TAD commissioner as Registrar general for the purpose of control and registry of moneylenders.

Rajasthan minor minerals rules were amended in 2002 with an additional sub rule 4(8) which requires prior recommendation of Gram Sabha or of Panchayat at appropriate level for issuing and renewing a mining lease.

7.2 Analysis of State PESA Rules

The Act of 1999 and the rules in 2011 - imitated the parent act in declaring that every village shall have a Gram Sabha - but never gave a process of how that 'village' shall be recognized by the State. The state has made certain dilutions and deviations from the parent law while framing the rules.

7.2.1 Village without identification

The state PESA rules have copied verbatim what the parent Act says about Gram Sabha. That is each village shall have a Gram Sabha. The state however has not followed any process to recognize what is termed as a village in PESA:

Sec. 4(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

A community managing its affairs in accordance with customs - is not recorded in any government document. The people that make a community are the only authority to recognize themselves as a village defined in 4(b).

It therefore makes sense to have a provision where voters in a village can pass a resolution to be recognized as a seat of Gram Sabha. Rajasthan PESA rules have a very weak mention of separate Gram Sabhas for villages in a Gram Panchayat in rule 4(1):

Secretary of Gram Panchayat shall be the Secretary of the Gram Sabha. In a situation where there are more than one Gram Sabhas in a Gram Panchayat, the Secretary of the Gram Panchayat shall be the Secretary of all the Gram Sabhas.

There is another mention of multiple Gram Sabhas in a GP in rule 10:

10. Joint meetings of Gram Sabhas. - (1) Every Gram Sabha is competent to execute its functions in its jurisdiction, but in matters like management of resources, construction of roads etc. in which co-ordination with other Gram Sabhas is required, a joint meeting of all Gram Sabhas falling under the jurisdiction of the Gram panchayat can be conducted.

But the Rules do not mention how such Gram Sabhas would be constituted and/or notified. Absence of any provisions of recognizing a village has made rule 4 and 10 meaningless.

The state has bypassed the spirit of PESA 4(b) and recognized revenue villages as villages for holding Gram Sabha meetings. The Act 16 of 1999 in sec. 2 defines:

(a) a "village" for the purpose of this Act shall mean a village specified as such by the Governor, by notification in the Official Gazette;

7.2.2 Ownership with hands tied

PESA sec. 4(m) says: "...a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with - ... (ii) the ownership of minor forest produce;"

Rajasthan PESA rules are a mockery of the above said section. The rule 2 interpretations include a comprehensive definition of MFP: (iii) "Minor Forest Produce" means Minor Forest Produce includes all non-timber forest produce of plant origin including bamboo, brush wood,

stumps, cane, tussar, cocoons, honey, wax, lax, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

This definition is a lip service, as the subsequent sections giving rights to Gram Sabha exclude Bamboo and Tendu patta - without any reason. Chapter VI - with enormous restrictions - makes Gram Sabha a titular owner of MFP. It is worth quoting the entire Rule 25 here (emphasis added):

25. Minor Forest Produce - The Gram Sabha shall be the owner of minor forest produce falling within its jurisdiction subject to following conditions:

(i) Ownership of minor forest produce does not include ownership of land, trees and/or wild life found in the area;

(ii) **No person shall cut grass** from any part of the forest land which is closed to grass cutting;

(iii) Grass from forest land **shall not be cut** in any period of the year except from 1st October to 31st January;

(iv) **No person shall graze** cattle except in such parts of the forest as are opened from time to time for grazing by Divisional Forest Officer;

(v) No person shall fell, uproot, tap, girdle, saw or convert any standing tree while enjoying the ownership rights of minor forest produce;

(vi) **No minor forest produce** shall be removed from the forest land after sunset and before sunrise **unless specifically permitted** by Divisional Forest Officer;

(vii) No person shall kindle, keep or carry any fire within 200 meter of the forest land during the period from 15th July to 30th September every year except as may be specifically permitted by the Divisional Forest Officer;

(viii) **No minor forest produce** shall be removed from the Protected Areas, Sanctuaries, National Parks, Conservation Reserves, Community Reserves, or Critical Tiger Habitats without specific permission of the Chief Wild Life Warden.

The subsequent rule 26(1) speaks of collection and marketing of MFP (other than the highly valuable ones) and leaves Gram Sabha only with the responsibility of organizing collection. All the control over sale and marketing remains in the hands of Panchayat's VFPMC and FD. The VFPMC has a member secretary from the FD.

Rule 26(2) lists instructions on how-to-harvest-bamboo and ends by saying that Bamboo harvesting will be done by the FD. It also mentions that the produce shall be transported to FD depots.

Rule 26(3) reads:

(ii) The Tendu patta shall continue to be collected by the Forest Department in accordance with the Rajasthan Tendu Leaves (Regulation of Trade) Act, 1974(Act No.5 of 1974)

Could any of these provisions be called ownership of Gram Sabha?

7.3 Primary Data Findings

7.3.1 Gram Sabha that never meets

The research team visited villages to check records at Gram Panchayat and to interact with Gram Sabha members. The team found that some GP did not have any separate proceeding registers for each village Gram Sabha in the Panchayat. Some GP had such registers, but had only one meeting registered in these registers. All other Gram Sabha proceedings were kept in a single book at Panchayat level. This indicated that GS meetings were not regularly held in the villages. GS proceedings of revenue villages (as observed in Ukhllyat GP) were unclosed since 2019, there was no signature/stamp of secretary.

The team also observed a frequent violation of the rules of quorum, as only one out of 10 meetings had the requisite quorum.

The team found that the Peace Committees (as per PESA rules) elected in a Gram Sabha meeting with many of the committee members absent in Gram Sabha. Rather the number of people attending the meeting was far lesser than the number of people elected to the committees.

Gram Sabha proceeding register in Lohari (GP Umariya) was written by villagers, all signatures were genuine and quorum complete, but there was no signature of secretary and president (Sarpanch/upsarpanch/ GP member). The BDO has nominated secretaries, (as per rule 4(2)) but they never turned up. The BDO claimed to be unaware of the absence of nominated secretaries.

Rule 3(d) requires every Panchayat to obtain a certification of utilisation (UC) from the Gram Sabha. None of the Panchayats visited could produce such UC before the research team.

All these observations lead to an inference that there is no functional Gram Sabha.



Image 4: Meeting with villagers and Panchayat Secretary in Banswara, Rajasthan

7.3.2 Peace Committee - only on paper

The state rules have a very elaborate chapter III on peace and dispute resolution. The state conducted a campaign to constitute peace committees and reportedly constituted committees in 4939 villages out of 5696 total villages.

Rule 16 speaks of the role of police. In case police receive information about disruption of peace, they are expected to present a report to Peace committee. In case of non-serious crimes, the police is expected to share the FIR with peace committee and try to solve the matter through Gram Sabha.

The research team interviewed local police inspector and found that the police station had no knowledge of PESA rule 16. And did not even have contact numbers of Peace committees established. There has been no training of police on PESA and the state has not taken any efforts to connect the 4,939 peace committees to police stations.

The research team asked members of Gram Sabha to introduce their peace committee or tell us names of any member of peace committee they had elected. They could not tell.

The team enquired whether the village had a traditional system of peace keeping and dispute resolution. The villagers said they had such system and it functioned effectively. They also gave recent examples of dispute resolution by their village assembly called 'Panch baithak'. This is the 'customary mode of dispute resolution' as it is called in sec. 4(d) of PESA. But the state has failed to recognize and synchronise it with the rules it has framed.

This indicates that the chapter III is not implemented.

7.3.3 Interaction with frontline Panchayat officers

The research team held an interaction with VDOs (Village Development Officers) and other officers in the department at Panchayat Samiti, Banswara (RJ).



Figure 6: Interaction with VDOs

Following were the key points that emerged from this interaction:

- The VDOs said separate Gram Sabhas are conducted for all revenue villages (not for Phaliya or hamlets).
- There are no bank accounts of the Gram Sabhas and there is no official stamp/seal either.
- People are not interested to show up in the Gram Sabha meetings. Most tribals are working as daily wage laborers, so they don't want to lose their daily wages and sit in a Gram Sabha with no benefit - this was a collective opinion of all the VDOs present.
- The only widely available MFP is Tendu Patta and it is not in the hands of Gram Sabha, but in the hands of state-controlled RAJAS Sangh.
- There is no power with the gram sabha to take decisions; the topics are only nominally discussed and the villagers are aware that no matter what

the decision is going to be in favour of the resolution from the government - this was a collective opinion of all the VDOs present.

Observations:

- The people assemble in their Phaliya or hamlet and manage their affairs according to customs. Thus a traditional Sabha continues with full participation of people including women. The Government i.e. the Panchayat Raj department has kept the 'official' Gram Sabha mis-aligned with the traditional Sabha. That is why they do not get any participation. The agenda is top-down and there is in practice no scope for people to set the agenda and date of a Sabha. When people have no relation to the agenda pushed from above, it is but rational for them not to participate in such 'official' Gram Sabha meetings.
- There are minor and major minerals present in some of the blocks like Talawada, where it is common for the companies to seek licenses to expand their mining area and/or pass a highway through the region. Hence, every time such a project comes no consent is asked from the Gram Sabha. Therefore, the villagers are not interested to show up for the meetings.
- VDOs were not aware of the VFPMCs in the village. These committees are supposedly constituted under PESA as a committee of the GP. On the other hand, the DFO of Banswara spoke to this team about how these committees were managing the forest resources in all the villages. There is contradiction between Panchayat and Forest Departments' statements regarding which committees actually manage MFPs.

7.4 Recommendations to the State of Rajasthan

The State of Rajasthan is recommended to take following actions for ensuring effective implementation of PESA:

1. Establish a PESA monitoring and capacity building cell at state level with officers from Panchayat Raj and Tribal Areas departments and independent experts. A post of PESA director may be created at state level taking cue from Government of Maharashtra.
2. Amend the rules or notify through the Hon'ble Governor's office -
 - a. Declare a process for notifying hamlets/habitations as villages for the purpose of separate Gram Sabhas. The process as mentioned

in Maharashtra PESA rules 2014 or Madhya Pradesh draft PESA rules 2022 may be considered as benchmark for this purpose.

- b. Establish peace committees at hamlet/habitation level thus synchronising the committee with traditional dispute resolution systems. The current peace committees are defunct, while the traditional systems are working effectively.
 - c. Remove restrictions on MFP. Rule 25 must be amended to ensure that all MFP (as defined in Rule 2) is in the hands of Gram Sabha. It is retrograde to have provisions depriving Gram Sabha rights over Tendu and Bamboo (as in rule 26) and to restrict the rights to only a limited area/type of forest (as in rule 25) - and that too six years after FRA was passed with unrestricted rights in this regard. Hence it would be prudent and constitutional for the state to amend rule 25 and 26 and thus vest Gram Sabha with full ownership rights over MFP.
 - d. Remove control of sale of Tendu from the hands of VFPMC. The VFPMC is controlled by its member secretary, an employee of the Forest Department. This could be hardly called endowing Gram Sabha or PRIs with the ownership of MFP (ref. Section 4(m)(ii) of PESA)
3. Consider empowering Gram Sabha at habitation level with funds taking cue from Maharashtra where TSP 5% funds are transferred to Gram Sabha kosh as untied funds.
 4. Consider providing functionaries to Gram Sabha like an assistant secretary (a local educated youth on short-term contractual payment basis) or a PESA mobiliser (a local youth with stipend for Gram Sabha mobilisation and record keeping).



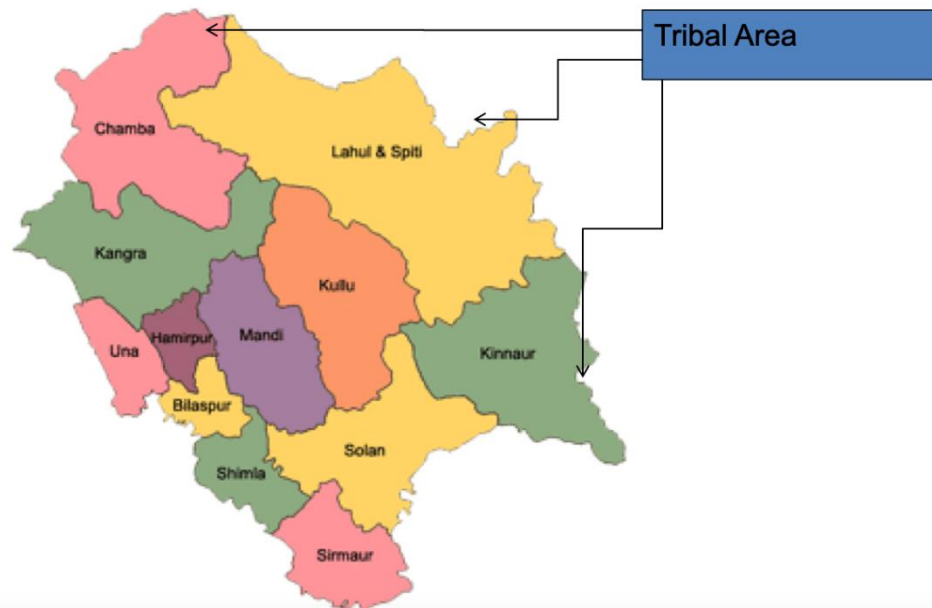


Figure 7: Image source: HP Panchayati Raj Department

This research did not include any field study in Himachal Pradesh. Hence there are no observations regarding implementation.

8.1 State Summary

The tribal population in Himachal Pradesh constitutes 5.71% of the total population as per the 2011 Census. Of the total tribal population, 32% lives in Scheduled Areas of Himachal Pradesh. The Scheduled Areas in Himachal Pradesh cover entire districts of Lahaul & Spiti, Kinnaur and partially cover Chamba district.

The State notified its PESA Rules in 2011, 15 years after the PESA Act was enforced. The Himachal PESA Rules while do comply with the Act in some aspects, the Rules fail to recognise the traditional Gram Sabha of a community. The Rules restrict the powers and functioning of the Gram Sabha in many aspects. It can supervise Gram Panchayat, as the Gram Sabhas have to give the Utilisation Certificate, but the Rules fail to give financial empowerment to Gram Sabha as there are no provisions for Gram Sabha Kosh. Similarly in the case of MFP rights, Rule 15(3) says that the management of MFP shall be done in consonance of Forest Rights Act. But Rule 16 contradicts the previous Rule as it gives the Forest Department the power to determine the royalty on MFPs.

The biggest contradiction is between the PESA Act and Himachal Pradesh Panchayati Raj Act. Section 97-A(s) of the State Act says that this chapter will prevail over anything inconsistent therewith elsewhere in this act. Section 5 of PESA says the State laws have to be in consonance with PESA Act.

The State needs to critically review their own laws to comply with PESA. After more than two decades, since the inception of PESA, the

State needs to be more proactive in raising awareness and empowering Gram Sabhas.

8.2 Recommendations

The State should make amendments to notify hamlet level Gram Sabha. Maharashtra PESA Rules can be referred for the same.

The State PESA Rules should be amended align with Forest Rights Act and PESA Act in aspects of MFP.

Instead of consultation/recommendation of Gram Sabha in land acquisition cases, the State Rules should be amended to make Gram Sabha consent mandatory.

The PESA Rules should be amended to include Gram Sabha Kosh and 5% of TSP funds should be transferred to Gram Sabhas.

The Himachal Pradesh Panchayati Raj Act should be amended to be in consonance with PESA.

The State should proactively raise awareness among its officers as well as the general public on the provisions of PESA.

A state monitoring committee should be formed to supervise the implementation of PESA



9. Telangana

This research did not include any field study in Telangana. So this chapter does not include any observations regarding implementation.

9.1 Introduction

Telangana state was formed in 2014. It has 32 Scheduled Tribes¹⁰. There are 9 scheduled districts in Telangana state, namely; Adilabad, Komarambheem-Asifabad, Mancherial, Mulugu, Warangal Rural, Mahaboobabad, Bhadradi, Kothagudem, Khammam, and Nagarkurnool. There are 85 Mandals out of which 30 Mandals are fully scheduled areas and 55 are partially scheduled areas. The state has 31.78 lakhs tribal population¹¹ that is 9.08% of the total population of Telangana state. As per Forest Survey of India, the Recorded Forest Area (RFA) is 24% of the state's geographical area. The state is rich minerals like, Quartz, Granite, Mica, Dolomite, Laterite, Feldspar etc.

¹⁰Data from Ministry of Tribal Affairs website

¹¹ Data from website of Tribal Welfare Department, Telangana

Telangana adopted PESA Rules of Andhra Pradesh, 2011 in 2014. Following are the findings of the study: including analysis of Telangana state rules in comparison with other states, and recommendations to the state.

9.2 Review of the Telangana PESA Rules

Rule 3 gives a process for notification of villages. This keeps the power to constitute a village (and consequently a Gram Sabha) in the hands of divisional commissioner and district collector. As per rule 3(iii) the Collector is expected to draw a list of villages in consultation with PO-ITDP. None of the related departments; i.e. revenue and tribal have any functionary at hamlet/habitation level. They have no records at such level. It seems impractical that these officers can go beyond revenue village level to identify and notify villages. The way PESA defines a village requires that the declaration of village or Gram Sabha must start with voters making a proposal. (Example of MP and Maharashtra rules may be followed in this regard.)

Rule 5. Acquisition of land in the Scheduled Areas:

Under this provision the power and authority to review proposed project for land acquisition is given to Mandal Praja Parishad (Intermediary level Panchayat). There is no right or role of Gram Sabha to recommend, review or reject a proposal for land acquisition. Gram Sabha as members has the potentially project-affected people. The MPP does not have them. The Rules empower Mandal Praja Parishad to make decisions and recommendations on the proposed land acquisition project.

Rule 26 of Maharashtra PESA Rules requires consultation with Gram Sabha before land acquisition. Under the provision a written information along with the proposal shall be submitted to Gram Sabha. The Gram Sabha is authorized to review proposed project, hold discussions with the concerned authority and make recommendations.

Rule 7. Grant of prospecting license or mining lease for minor minerals:

Under this provision the authority to approve and reject individual/tribal society/tribal mining corporation through a resolution lies with the Gram Panchayat. Under 7 (iv), the decision of the Gram Panchayat is binding and final.

Rule 23 of Madhya Pradesh PESA Rules is on minor minerals. Under the provision, prior to initiation of selection and allotment of mining area, before auction and issuing licence, it is mandatory to get recommendations from the Gram Sabha.

Under rule 22 (5) it is mandatory for the Mining Department to provide Gram Sabha with all the details of allotment and auction of mining that lies under traditional boundary of the Gram Sabha.

Rule 8 (2) Ownership and disposal of MFP:

Under 8 (2) (a), the management, harvesting and disposal of bamboo and beedi leaf shall be done by Forest Department.

In PESA Rules of Madhya Pradesh, Maharashtra and Chhattisgarh have enabled the Gram Sabhas to manage, collect, and dispose all MFPs including Bamboo and Tendu leaves. Under Forest Rights Act, 2006 (FRA) no MFPs are exempted from the Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs). Exempting Bamboo and Tendu leaves is a violation of FRA as well.

Under 8 (2) (f) ITDA project officer shall be the chairman of committee constituted for management of Bamboo and Tendu products.

Project officer from ITDA being chairman of the management committee does not serve any purpose. Project officer is not the direct stakeholder in this case. A representative from Gram Sabha or Gram Panchayat is a direct stakeholder in the committee and they shall have a role to play in it.

8 (6) (v) Control over local plans and resources for such plans including Tribal Sub-Plans (TSP): to draft tribal sub plans for their village, Gram Sabha has no role to play. The Mandal Parishad and Gram Panchayat may review implementation of TSP in their jurisdiction.

There is no mention of who shall draft or contribute in drafting TSP in the villages.

Under provision 46 of Maharashtra PESA Rules, it is mandatory for the Gram Panchayat to obtain approval from the Gram Sabha on plans and projects for the village. Maharashtra has transferred 5% of state TSP funds directly to Gram Sabhas of Scheduled Areas.

9.3 Recommendations

1. The State PESA Rules should be amended to allow a community/hamlet to initiate the process of recognising their own Gram Sabha. In addition, the office bearers of the Gram Sabha should be separate from that of the Gram Panchayat.
- 10 The right to own and dispose MFP including Beedi leaves should be given to Gram Sabhas and not a cooperative as specified in PESA and FRA.
- 11 All State subject laws should be amended to comply with the PESA Act.
- 12 The Rules should be amended such that the Gram Sabha can open their bank account and some part of TSP budget is made available to Gram Sabhas like the State of Maharashtra has done.
- 13 In matters related to mining and land acquisition, the consent of Gram Sabha should be made mandatory.
- 14 The village development plans shall be developed at the Gram Sabha level not at GP level with the consent of the Gram Sabhas.
- 15 The Tribal Welfare Department should run awareness programs for government officials as well as the general public about the provisions of FRA.



10. Andhra Pradesh

This research did not include any field study in AP. Hence this chapter does not have any observations regarding implementation.

10.1 State Summary

The tribal population of Andhra Pradesh forms 5.53% of the total state population. There are 34 Scheduled Tribes, among which tribes like Chenchu, Kondareddy, Kondh, Porja, Gadaba, and Savara are categorised as Particularly Vulnerable Tribes. The Fifth Scheduled Area in Andhra Pradesh is spread over 5 districts namely; Srikakulam, Vizianagaram, Visakhapatnam, East Godavari and West Godavari.

The State notified its PESA Rules in 2011. A decade has passed since the notification of the Rules but studies like Suribabu et al. 2020,

sponsored by the Department of Tribal Welfare Government of Andhra Pradesh report the lack of awareness of PESA in Gram Sabhas. The empowerment of Gram Sabhas as envisaged in PESA has not been achieved. The Rules in some places are themselves problematic and not in consonance with the parent Act. The state failed to recognise the traditional villages of tribal communities. To make matters worse, the Sarpanch is supposed to preside over Gram Sabha meetings. The Rules dilute the powers of Gram Sabha in important matters related to land acquisition come under the jurisdiction of Mandal Praja Parishad. For further detailed analysis of state PESA rules, readers are requested to refer to the chapter on Telangana. The twin states' rules are identical.

The AP PESA Rules also fail to comply with FRA and PESA Act in matters of MFP. AP PESA Rule 8(II) give monopoly rights of MFPs to Girijan Co-operative Corporation Limited as per GCC by Trade Regulation 1979 issued in G.O.Ms.No.20, SW(F2) Dept., dated 14.2.1983. Girijan Co-operative Limited is a cooperative run by government officers.

The State of Andhra Pradesh should refer to Maharashtra and Madhya Pradesh PESA Rules to understand and amend their own rules to make Gram Sabha self-sufficient as expected in the PESA Act.

10.2 Recommendations:

2. The State PESA Rules should be amended to allow a community/hamlet to initiate the process of recognising their own Gram Sabha. In addition, the office bearers of the Gram Sabha should be separate from that of the Gram Panchayat.
- 11 The right to own and dispose MFP including Beedi leaves should be given to Gram Sabhas and not a cooperative as specified in PESA and FRA.
- 12 All State subject laws should be amended to comply with the PESA Act.
- 13 The Rules should be amended such that the Gram Sabha can open their bank account and some part of TSP budget is made available to Gram Sabhas like the State of Maharashtra has done.
- 14 In matters related to mining and land acquisition, the consent of Gram Sabha should be made mandatory.
- 15 The village development plans shall be developed at the Gram Sabha level not at GP level with the consent of the Gram Sabhas.
- 16 The Tribal Welfare Department should run awareness programs for government officials as well as the general public about the provisions of FRA.



Part 4:

Stakeholder awareness findings

The ABVKA organisation has a broad network over all tribal areas of the country. It appealed to tribal village youth to volunteer and participate in a structured-questionnaire-based survey of PESA awareness in villages. This was conducted in Maharashtra in 100+ villages of seven districts. It was initiated in other states, but we found that nowhere were any villages notified as multiple Gram Sabhas in a single Panchayat. This inhibited and made redundant the asking of questions about Gram Sabha powers in PESA as a different entity from the Panchayat. Hence it was not conducted in other states.

However, the findings from Maharashtra - which is at the forefront of implementing PESA - are worth a serious attention.

This stakeholder survey was conducted using a structured questionnaire with multiple-choice-questions. (The questionnaire in annexure.)

The questions were asked to five types of stakeholders:

- 1) Sarpanch (Elected president of Gram Panchayat)
- 2) Gramsevak (Gram Panchayat Secretary as appointed by the State)
- 3) PESA mobiliser (a village para-volunteer appointed by the State under RGSA¹²)
- 4) Gram Kosh committee members (Signatories elected by Gram Sabha to oversee 5% TSP funds handed over to Gram Sabha Kosh account)
- 5) Members of Gram Sabha (voters/villagers belonging to ST)

Category of respondents	Number of Respondents	Nashik	Pune	Ahmednagar	Palghar	Chandrapur	Amravati	Yawalmal
Sarpanch	65	30	19	4	0	5	1	6
GP Secretary	15	4	8	2	0	1	0	0

¹² RGSA: Rashtriya Gram Swaraj Abhiyan

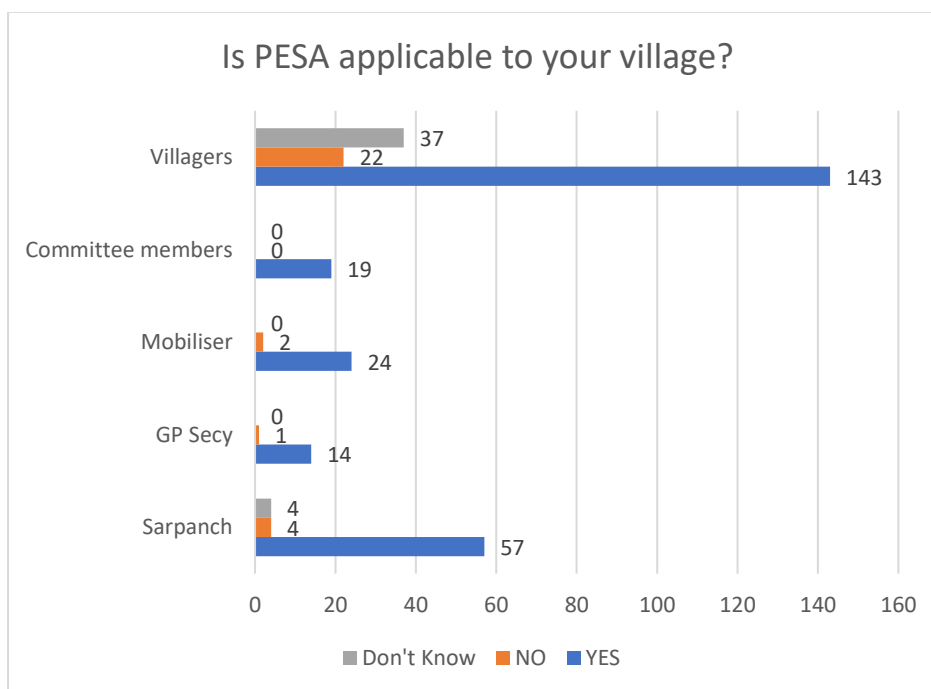
PESA Mobiliser	26	5	14	1	0	4	0	2
Committee members (Gram Kosh committee)	21	12	7	1	0	1	0	0
Villagers	203	88	36	11	16	39	0	13
Total	330	139	84	19	16	50	1	21

Note: GP Secretaries and Sarpanch are in smaller numbers because they refused to respond in many places.

Following is the findings of how these types of respondents / stakeholders responded to some basic questions to test their awareness of PESA act and the state rules.

16.1.1 Whether PESA applicable

79% of the respondents were aware that PESA was applicable to their village. This indicated that they had heard of PESA. Details of how each category was aware of this is depicted in the graph here:

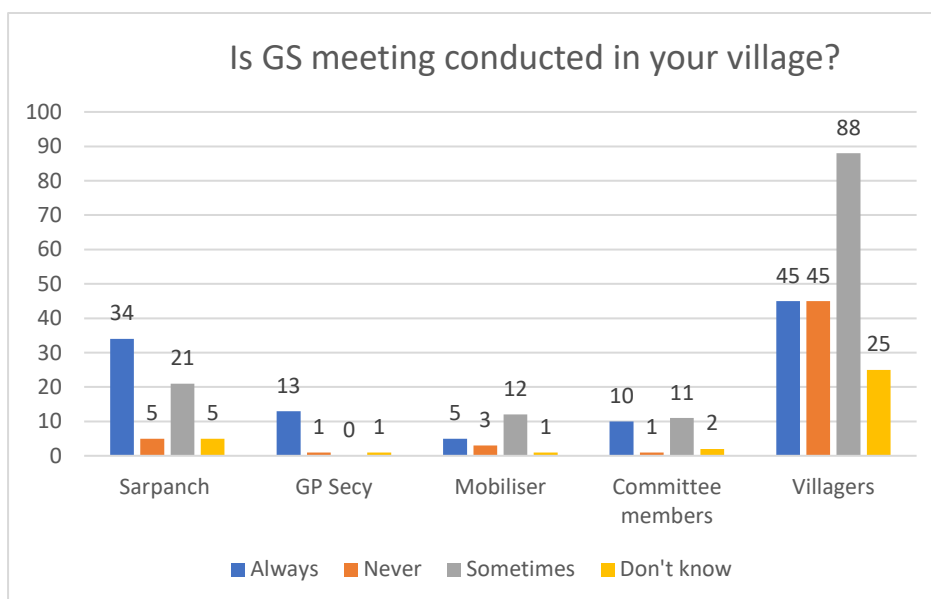


The overwhelming awareness about PESA applicability takes us to the next level of details of provisions that PESA makes.

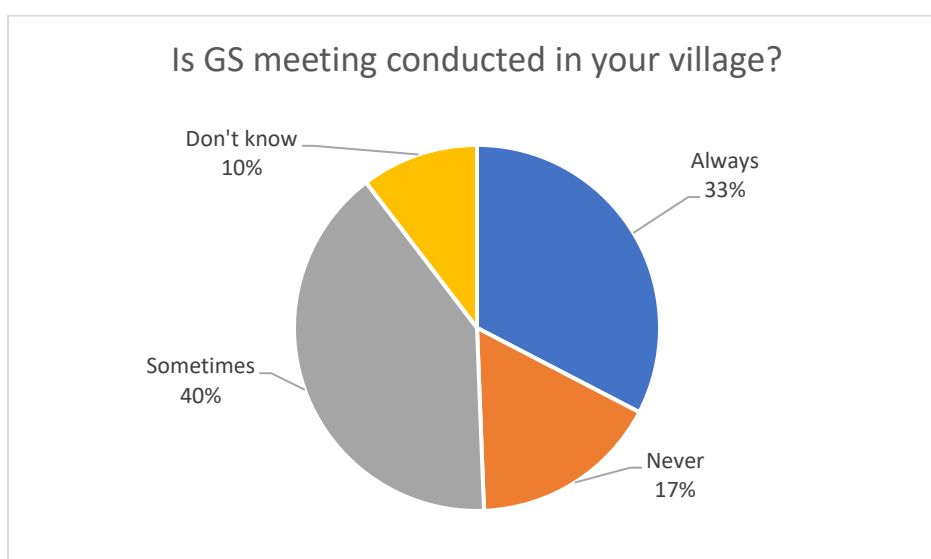
16.1.2 About Gram Sabha meeting

The PESA rules of Maharashtra have made provision for notifying villages and it is expected that Gram Sabha meetings shall be held in each village independently. Only on issues where multiple villages are involved is there a provision of a joint meeting of Gram Sabhas. This however is not followed in practice. Meetings continue to be held at the Panchayat office and even if some

villages have independent Gram Sabha notified, the villagers are asked to come to GP office for a Gram Sabha that has ceased to legally exist. Hence the question whether GS meeting is conducted in your village:



In terms of percentage of all respondents, we found that only 1/3rd of the respondents said that the GS (Gram Sabha) meeting was conducted in the village. Majority of respondents either replied negative or were not sure.



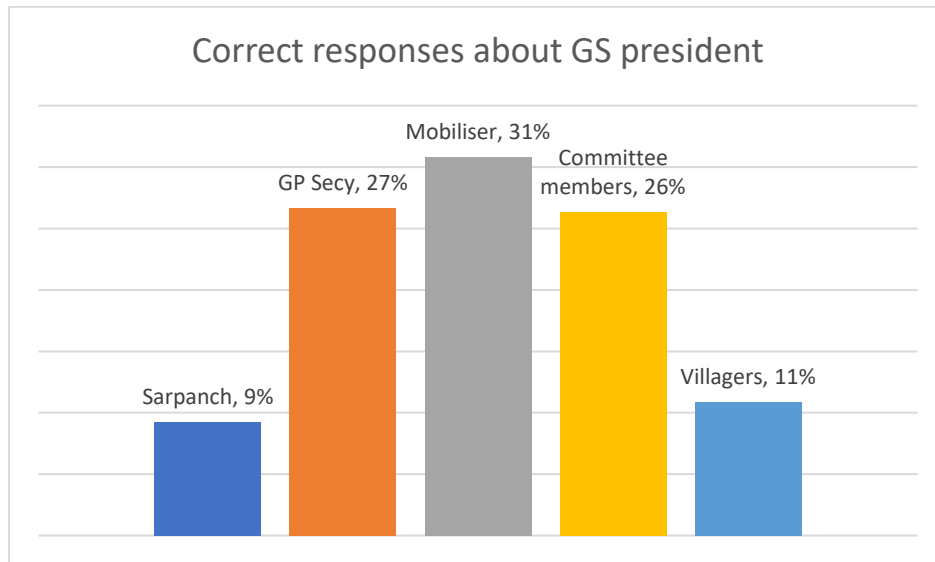
16.1.3 About presiding a Gram Sabha meeting

As per Maharashtra PESA rules, the voters sitting in a Gram Sabha meeting can elect or opt by consensus a president (Adhyaksh) from amongst themselves. The Sarpanch, Upasarpanch, and the GP members are disqualified from presiding over a Gram Sabha meeting except the first meeting of each financial year.

The questionnaire gave following choices to the respondents:

- a) Gramsevak can preside a Gram Sabha
- b) Sarpanch is always the President of Gram Sabha
- c) Each meeting of Gram Sabha can elect a new President
- d) Any voter from ST can become a President
- e) Don't know

Options c and d are both correct answers. When we analysed the responses across categories, we found following percentages of correct responses:

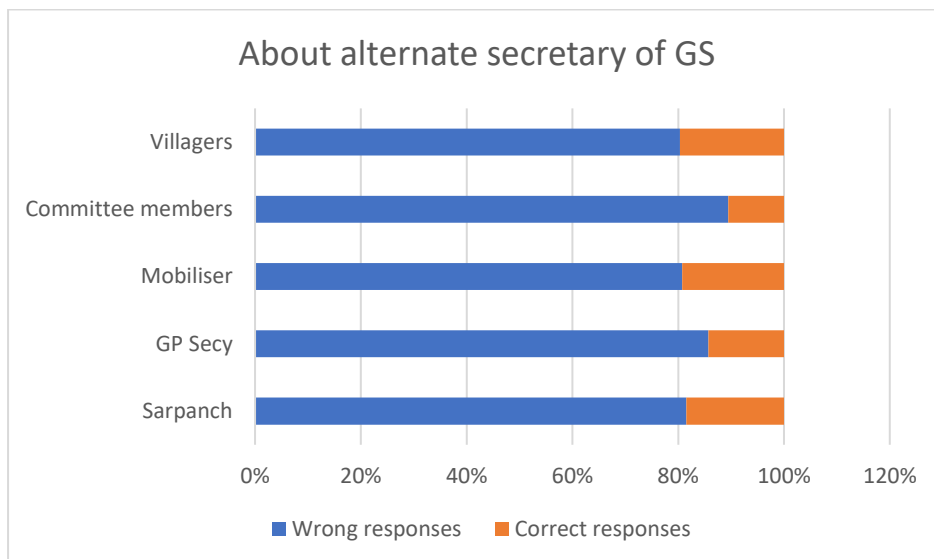


This is a very pathetic picture where none of the categories crosses even a passing percentage of 35. Majority of respondents are not aware that President of Gram Sabha is a post independent of the Panchayat. The mobilisers are at a comparative high; mainly because they had an official orientation of PESA. But it also reflects that despite an orientation of PESA - 69% of mobilisers gave wrong answers.

16.1.4 Who can be secretary of Gram Sabha?

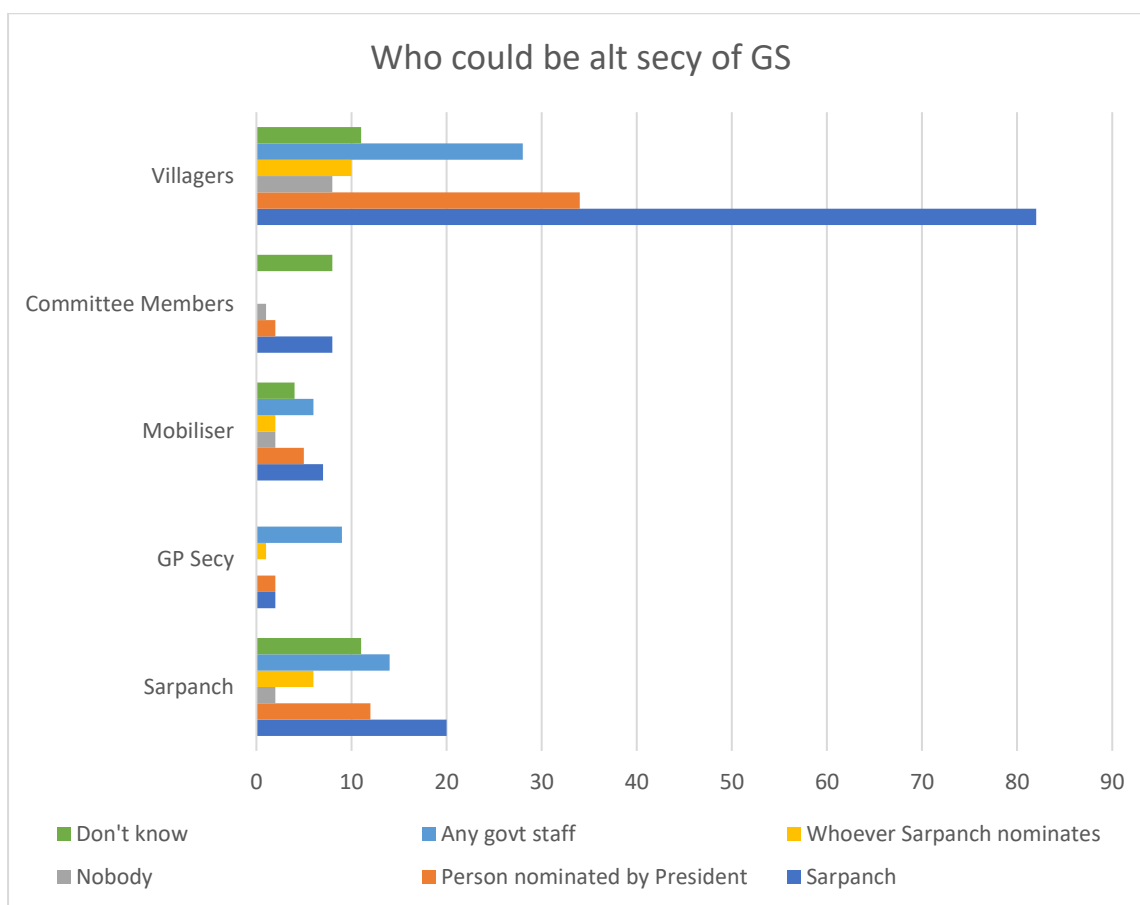
The Maharashtra Gram Panchayat Act (III of 1959) was amended in 1997 and sec 54A to 54E were added specially for Scheduled Areas. Sec. 54C mentions that in case the GP secretary is not available in a Gram Sabha meeting, the president of that meeting may authorise another person present to be the secretary of that meeting.

We asked this question to all categories of respondents and following was the result:



It is notable - rather alarming that more than 80% of all the categories gave wrong answers.

The details of each category responding is shown in the following graph:



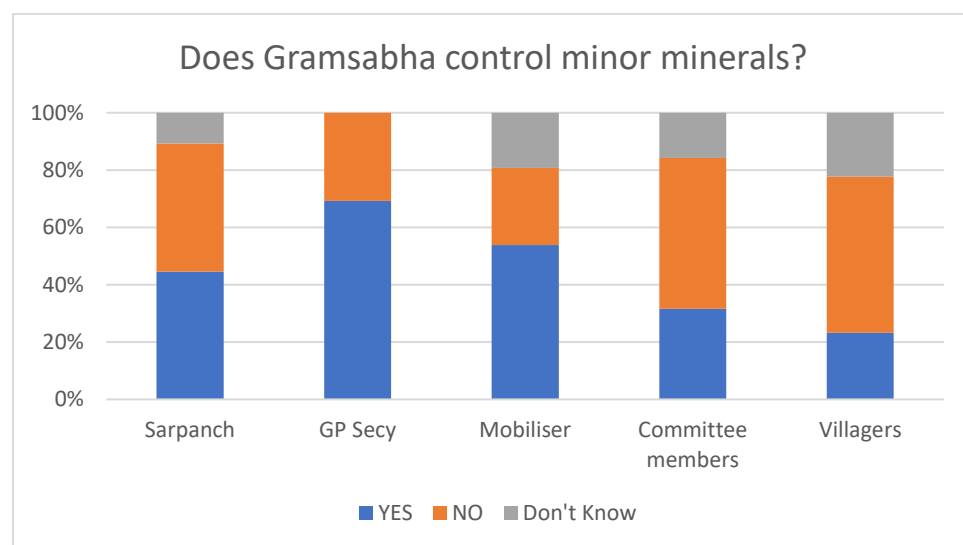
It is also worth noting that the most common wrong response from all categories is that the Sarpanch can be the secretary of Gram Sabha if the GP secretary is absent. Even majority of Sarpanchs have responded so. This indicates the rampant negligence of the institution of Gram Sabha by the Panchayat

bureaucracy. It is only the majority of GP secretaries who gave an answer close to correct (but not correct) i.e. any government staff. They too missed the point that one has to be nominated a secretary by the GS president.

16.1.5 About control over minor minerals

The State rules authorise the Gram Sabha to control minor minerals within its territory (except the forest land). This means Gram Sabha can formulate regulations or restrictions about whether and what quantity of minor minerals may be extracted from its territory. The research questionnaire asked the respondents whether the GS had made any rules/regulations about minerals. It was assumed that if there were some regulations, the Gram Sabha was using its powers in PESA.

Following was the percentage of responses to this question:

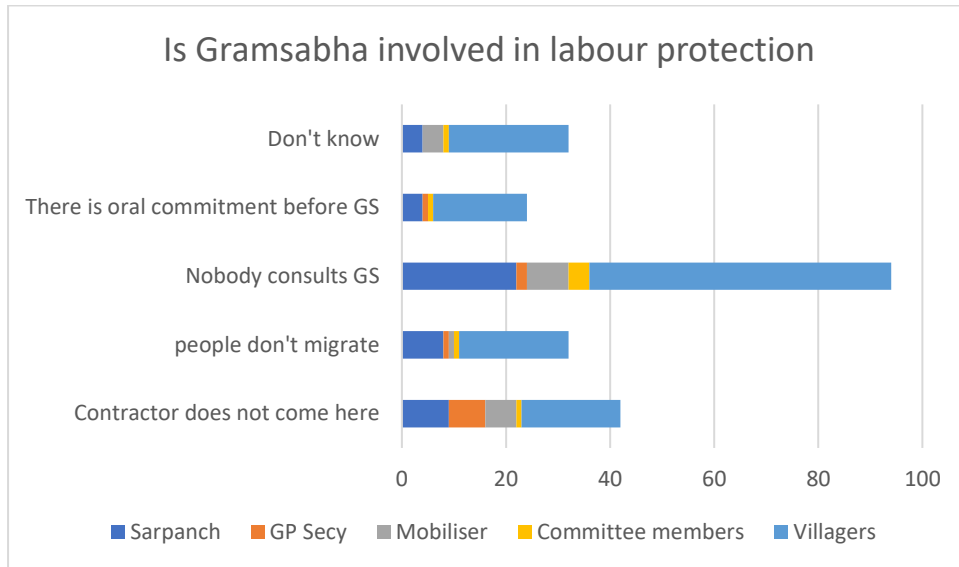


Of the 325 total responses to this question, only 105 i.e. 32% said YES. Majority of respondents were not aware of Gram Sabha powers regarding minor minerals.

This is important from two angles: 1) the Gram Sabha could demand a share of royalty over minor minerals and thus enhance its income, 2) it can control extraction in order to save riverside lands and other aspects of ecology.

16.1.6 Labour protection by Gram Sabha

The Gram Sabha has rights to protect local labour rights. As per rules, an oral or written agreement must be made in a Gram Sabha meeting before taking villagers as labour. A question about whether Gram Sabha is consulted in hiring labour was met with following responses:



Highest number of respondents from all categories have said that GS is not consulted when local labour is taken outside the village or when outside labour is brought to the village. This means there is ignorance about PESA rules in this regard.



Part 5:

Conclusion

The first and foremost point missed by all the states is the recognition of Gram Sabha at its natural traditional place. As articulated by the Bhuria committee, a village is a ‘face-to-face community’ where people come together naturally without any external motive or force.

As observed in our field visits, tribal villages continue to have a traditional assembly where people of all tribes/communities in the village sit together and gender there is no bar. The dates of such assemblies are often linked to festivals or to seasonal activities of agriculture. This traditional assembly or Sabha happens to meet at least twice every year. This assembly has special meetings whenever a need arises - whether it is a dispute to be solved or a common calamity to be met or a celebration to be planned. The villages have their traditional system of issuing an oral notification of this assembly to all the households in the village. This assembly works on the principle of mutual trust and general consent. The rules / regulations passed by this assembly are generally respected by all the villagers. This assembly is usually of one habitation (hamlet/pada/phaliya/tola). Occasionally, it could be of a group of habitations where such habitations grew from a single habitation over generations. This growth from one habitation is almost always marked by presence of a protector deity worshipped together by this group of habitations.

What PESA envisioned was matching this traditional assembly with constitutional provisions of Panchayati Raj. This unfortunately has not happened barring a few anecdotal successes triggered by voluntary organisations. The major reason for this failure is the States have taken no efforts to formulate / recognise Gram Sabha at the same level as this traditional assembly. While on one side we met Panchayat Secretaries complaining that the villagers do not attend Gram Sabha; on the other side we found that traditional assemblies were being attended in full vigour by the villagers.

The Gram Sabha as currently recognised by the state is either at the level of Gram Panchayat or at best at the level of a revenue village. The GP is formed by clubbing a few villages in order to attain a certain size

of population, while revenue village is recognised for a certain minimum size of revenue-land-territory. Both have nothing to do with the natural village where the self-government is alive for centuries. The natural village has an organic growth over generations. People in such villages have bonds of interdependence; through shared use of natural resources as well as human resources. They are used to sharing their sorrows and joys with all others in that village. None of these strengths are enjoyed by the Panchayat. Rather it would be correct to say that this mismatch is depriving both sides: of the Panchayat of true participation of people, of the traditional Sabha of dividends of the welfare state.

The Panchayat and the revenue village are basically administrative units for top-to-bottom delivery of government services. People perceive Panchayat as a place where they can stake claim as a beneficiary for some scheme. Panchayat is a service window where people always stand outside. They do not perceive it as a place where their voices will be heard and their decisions will be respected. A Gram Sabha is expected to be such place.

PESA needs to be seen in the larger national context as an initiative or pilot to revive roots of Indian democracy and graft them with the colonial structure of our centralised bureaucracies. Our history has evidence that this works. Maurya empire had a larger territory and lesser means of communications as compared to today and it was the first government in India that had a centralised bureaucracy - as delineated clearly in the Arthashastra of Kautilya. Yet the same book (Arthashastra) advises the King to respect village assemblies (Sabha) and village elders (Gram-Vridha) in matters of land, water, forests. The strength of a village assembly was recognised by all Indian governments prior to the advent of the British. The veteran nationalist leaders in the constituent assembly debates have given numerous instances of village self-governments.

PESA deals with Scheduled Areas i.e., the areas which were once 'partially excluded' from British administration. This exclusion in a way helped these areas keep alive the Indian traditions of village self-government. Hence it is easier to connect with the roots in such areas. The Governments - state as well as central - need to look at PESA as the pilot of connecting the strengths of indigenous roots of democracy with contemporary efforts of deliverance of good government.

People's true participation when welcomed by the central system ensures the best results of good governance. However, if people's true participation is hindered or inhibited by the bureaucracies it results in resistance and could lead people to extremism.

Hence this research strongly recommends that the States must take up a mission of notifying hamlets as Gram Sabha. And subsequently provide hand-holding support to such Gram Sabhas along with funds and functionaries.



Part 6:

Primary data (transcriptions)

1 Chhattisgarh

1.1 Interview with Subject Experts

1.1.1 Vijendra Aznabi

Date: 25/01/24

Background of expert

Mr. Vijendra works for OXFAM, a British-founded confederation of 21 independent charitable organisations, that focuses on alleviating global poverty. He works towards streamlining people's demands, to make them clear and sharp.

a. What led to the enforcement of PESA Rules in 2022?

Chhattisgarh has a huge tribal population. In 2018 elections, Congress put PESA Rules in their manifesto. As they won the elections, they had to draft and implement them.

b. Can you explain the drafting process of PESA Rules?

Many organisations were part of the drafting process of PESA rules. The Koya Bhumkal Kranti Sena (KBKS) came up with an extensive draft of PESA rules. The rules mainly insisted on continuation of existing traditional systems of tribal communities. All tribal societies have different traditions. They also have different community heads for different occasions. One might be for festivals, another for marking traditional boundaries of a village et cetera. such systems work when a Tola or a village is homogeneous i.e. it consists of a single tribal society. This becomes complicated when there are more than one tribal communities in the same village. PESA focuses on making decisions by majority, but if tribal communities have different heads for different occasions, then there is conflict in the decision-making process. What is envisaged in PESA, and traditional governing systems of tribal communities, do not always go hand-in-hand.

c. Are there any cases of land alienation or acquisition in Chhattisgarh?

There are cases of land issues in Chhattisgarh because of coal. There is also confusion as there are multiple laws, court orders and rules for the same. For example, there is a High Court order that says that the Coal Bearing Act supersedes other laws and it says that if there is coal, a person's land can be acquired. It is not considering community consent or consultation.

There is also a growing class of tribals that are pro-development and they want to sell their land.

d. What are your thoughts on the current PESA rules?

There are some lacunae in the current rules. For example, if a Gram Sabha of a tola, mohalla wants to make their own account in the bank, the bank will ask for a notification that recognises their village. But there is no notification for Gram Sabha of a hamlet level. There is a list of only Gram Sabhas of revenue villages. So even if a Gram Sabha at hamlet level wants to take control of their finances they cannot.

Right now the Gram Panchayat Secretary is the Secretary of a Gram Sabha. Ideally it should not be the case but literacy is a big challenge in Chhattisgarh. There should at least be someone in a village who can read or write letters or get the Gram Sabha letterhead so they can record Gram Sabha meetings and functioning.

There is also a difference between Sarpanch and community leaders. If political parties take up grass-root politics and Sarpanchs are challenged then there is scope for reform.

If the government tries to set up a Federation of Gram Sabhas then RPMC leaders or other community leaders can also become good leaders and stand up against certain forces.

1.1.2 Interview with Ashwini Kange

Date: 25/01/24

Background

Mr. Ashwini Kange is a leader in Koya Bhumkal Kranti Sena. He belongs to the Gond Community.

A. Can you tell us about your journey and how you started working on PESA?

In 2005, 2008, we used to publish booklets on PESA and other related laws in Bastar.

There is a huge difference in how political leaders perceive PESA from 2008 to now. Earlier they would oppose PESA and tell us to focus on *jal, jungle, zameen*.

We wanted development in Bastar. But you cannot have overall development in one go. You have to do it step-by-step in different departments.

Only if we make tribal areas economically sound can that region develop further. As the Gond community has a majority population we thought we will start working with them first. If you make the Gond community able, then the entire region can develop.

KBKS started working from 2004 with Gond youth. We wanted to train them. But it took us two years to convince the Gond Samaj that training is important. There is no tradition of training in Gonds. We somehow convinced the Samaj to let us train the boys because they were not okay with girls and boys staying together for three days. Initially, they were not giving us permission for training boys and girls both together.

So the first year we conducted training only for the boys. In the second year we convinced everyone for female participation.

We started in Kanker region, then moved to Bastar. Slowly Gonds from other states also started joining us.

B. What are your thoughts on Chhattisgarh PESA rules?

I felt happy that the rules were made and enforced even if the rules are twisted or wrong. In a way by enforcing these rules, they (government) are at least acknowledging that there is something called PESA.

Everyone thought PESA is part of Panchayat Raj Act but we always felt PESA is different. Unfortunately, people question the validity of PESA; they believe it is lower than the Panchayati Raj Act.

The government took 28 years to make the rules. How will they give NTFP powers to the community? How will decentralisation happen as expected through PESA?

In Kanhai, the community did not know the exact rules, but they knew that under PESA 4(m) they had ownership power of MFPs. If this was

under the Panchayati Raj Act, Tendu would be controlled by Sarpanch and Sachiv.

Other laws should have been amended to align with PESA according to Section 5 of the act. But then why have state laws that govern forest resources not been amended appropriately? These laws treat even bamboo at par with timber.

C. Do you think PESA Rules have enabled Gram Sabhas to govern themselves?

Without a clear framework, how can the Gram Sabhas become able to govern themselves, you have to give a clear structure right now. The structure is that of the Panchayati Raj Act and not of the Fifth Schedule. How can you then expect local leadership to thrive?

If you want self-governance then Gram Sabha should also get adequate powers. Go to any PESA State and ask if they conduct Gram Sabha meetings? The people will ask you which Gram Sabha, *Sarkari* Gram Sabha?

The Rules have a provision for Gram Sabha Kosh. but it is operated by the Sarpanch and Sachiv. How will the Gram Sabha put money in that account or how can they use money from that account?

To compare, the PESA Rules have a body. It has hands, legs, eyes, mouth, everything. But the soul that is required for functioning of the body, the government has kept it with itself.

D. What is the way forward?

The PESA act has the potential to bring community leaders to the forefront. This could reduce naxalism. Right now, the Panchayati Raj Act is given precedence. That is why naxalism is not being resolved.

The PESA act does not differentiate between nationalised and non-nationalised MFPs. So, the government should give ownership rights of both to people.

Bureaucrats should also understand the powers of the peace and justice committee. The IPC should also be amended according to the powers given to the peace and justice committee. Right now we are burdening the judicial system. Even small cases like the robbery of a goat gets into our system. This will go from SDM, to District court to even High Court. This can be easily resolved by the Gram Sabha on their level. If

such cases can be handled at the village level, then the burden on our judicial system will also be reduced.

1.2 Focused Group Discussions

1.2.1 Village: Madhopur

District: Mohala Mansur Chowki

Date: 23/01/24

A. How many tolas are there in this village?

There are two tolas in the village; Navatola and Ghavdetola.

B. Have you heard about PESA?

Nobody answered for a long time. One person said he knows there is something called PESA, but does not know what it is.

C. Do you conduct Gram Sabha meetings?

The village received Community Forest Resource Rights recently, so they have been conducting Gram Sabhas for the same for the past two months. The people in the village have decided to conduct their Gram Sabha 1st of every month.

There is confusion on what is a Gram Sabha. People think that the Gram Sabha for FRA is different from PESA Gram Sabha.

When we asked the women when was the last GS meeting or what was discussed they did not answer. They said we just attend the meeting.

When asked about the Gram Sabha of their tola, they said the Panchayat has nominated a President. But they don't know about PESA Gram Sabha.

D. What is discussed in the Gram Sabha meeting?

So far they have discussed issues related to forest fires. They have also discussed what to do in cases of stealing. Contractors have stolen sand from our villages. We have discussed what to do in such cases and how to prevent them.

E. Who is the President of the Gram Sabha?

We have not elected the President and Secretary yet. The RPMC President has been presiding over the Gram Sabha meetings as of now.

F. How do you resolve conflict?

If anyone in the village has any issue, they tell the village *Patel*. The *Patel* will call for a meeting of the village. The villagers in the meeting will ask about the issue. The villagers take a decision regarding the matter. These issues are resolved in the village itself. The person has to accept the decision of the villagers.

G. Have there been cases of land acquisition in this area?

Some part of the river and its bank comes under the CFRR area of the village. The mining department has started to mine sand from the river banks. But the villagers don't want mining in their CFRR area. The villagers are angry at the government because they gave permission for mining without Gram Sabha approval.

H. Do you attend the Gram Panchayat meetings?

When there is a Gram Sabha meeting of the Gram Panchayat, the villagers attend it. But they said that nothing really happens there. They are asked to sit somewhere, give their signatures and leave. Nobody really attends the meeting of the Gram Panchayat.

1.2.2 Village: Kanheli

Block: Manpur

District: Mohala-Manpur-Chowki

Date: 24/01/2024

A. How many tolas are there in this village?

There are tolas in the village. There are roughly 130 families in the village.

B. Do you attend Gram Panchayat meetings?

Not everybody goes for the meeting. Only the Panch goes for the meetings. People go to the meetings only if they are going to get benefits from a scheme. People also go to the meeting if the *Gayta* calls.

C. Who is a *Gayta*?

A *Gayta* is the traditional head of the village. It is a post transferred from a father to his son. But if the village feels that the son is not ready

for taking up the responsibilities of a *Gayta*, some other male will be chosen from the same family.

D. Has the village Gram Sabha taken any initiatives?

Brijesh Singh (School teacher) - Initially, we used to collect and sell Tendu Patta to the Forest Department. The FD would sell a bag to vendors at ~900 rupees. But the village only gets 400 rupees per bag of tendu leaves. The FD said we would get a bonus, but we did not get it for 4-5 years. When we got the bonus it was only 200 rupees. The government takes 18% GST on the leaves, if there are any losses, they are incurred by the contractor. Our demand is that, let the Gram Sabha deal with the contractor directly.

Awareness about PESA came in our village in October 2021. The new CM had given a byte saying PESA is implemented in Chhattisgarh. So we assumed PESA Rules will also be notified soon.

So, we started conducting Gram Sabhas to prepare for managing the sale of tendu leaves in our villages. We talked to 50 villages, but in the end only 13 villages were willing to take this initiative. We wanted to do all the work from plucking the leaves, processing, to storing. Gram Sabha of every village passed resolutions saying we will undertake the management and sale of tendu patta in the upcoming season i.e. March-May. All the resolutions were passed in Oct-Dec. We sent copies of all the resolutions to Tribal, Forest and other concerned departments.

We had also sent letters to the President of India. Maybe from her office, it came to the State government and the State government asked the forest department to enquire. The FD called 2 people from the 13 villages for a meeting. We told them about our plans, they recorded it, took our signature and said this is beyond our jurisdiction.

We also went to meet the Collector. The Collector asked us, “Why are we getting involved in all this, let the government handle this, you do what is possible at your level. You focus on getting your children educated”.

Just before the plucking season, we wrote to the government saying that, according to us, now is the right time to pluck the leaves. When we went to give the letter, we were told that what we are doing is illegal. Our tendu leaves might get seized. We said that under PESA Gram Sabhas have the right to ownership of MFPs. They said that Tendu is a

nationalised MFP and only government or government authorised agency can sell it. When we asked the officials to give their statement in writing, they denied. The officials told us to wait till the PESA Rules are notified but the leaves were already plucked. They could get damaged by moisture, if we store them for too long.

Then a meeting was set with a representative from District Van Upaj Control. He told us we are not authorized to sell Tendu leaves and if you do so they will have to take action against us.

We are willing to give the leaves to any contractor the government tells us to. But we have 2 conditions; one is that give us the same amount as auctioned and give it to the contractor who has the tender.

The collected leaves were kept at two locations. As it was already June, the leaves started catching moisture in one location, so we decided to move them. We communicated the same to the Ranger and asked him to either give the Transit Pass or accept the one issued by the Gram Sabha.

There were 5 tractors each with 50 *boris* of leaves used for moving. While moving the tendu patta, the FD confiscated the 5 tractors. All the villagers gathered because of the commotion. Finally, the FD gave in writing that what we are doing is illegal. The FD had caught only 250 bags, we still had 1500 bags, and the FD came to confiscate that as well. The entire FD staff of 400 came to confiscate it.

It's been 2 years since the fiasco. Most of the leaves have also been damaged. The issue is pending in the High Court now. This also caused conflict within community.

2 Jharkhand

2.1 Meeting with Subject Experts

2.1.1 Meeting with Balram Jo

- a. What is the reason that Jharkhand state has been unable to notify PESA Rules?

The state government has been working on draft rules for years. One of the reasons for delay in notifying rules is the infamous incident of

Khunti's Pathalgadi Movement that blew out of proportion. After the incident, the government scrapped the draft PESA rules. Since, 2021-2022 TRI in collaboration with some intellectuals on PESA have been working to draft the Rules. It is hopeful that now the rules might get notified.

b. The draft PESA Rules lack strong provisions to enable Gram Sabhas to have a control and authority over sanctioning lease for mining and land acquisition.

The state is rich in minor minerals and minerals. There are always new proposed mines in the Scheduled Areas. It is doubtful that the state shall liquefying its hold over them. It is hardly possible that the state will enable the Gram Sabhas to take decision over lease of minor minerals and land acquisition.

The state does not have any issue in giving right of MFPs and Tendupatta but the problem lies with land rights. Although rights over MFP and minor minerals are necessary. They should be listed by the government under rights vested to Gram Sabha.

c. There are provisions for conducting Gram Sabha in case of Land Acquisition under Jharkhand Gram Panchayat Act. Does such Gram Sabhas take place?

In case of land acquisition seldom a Gram Sabha is conducted. Though it is not a general practice, the Gram Sabhas conducted are usually for namesake.

2.1.2 Meeting with Deputy Director, MoPR, Sandeep Dubey

a. What are the reasons that the draft PESA Rules are being opposed in Jharkhand?

Some activists like Victor Malto from Adivasi Budhijeevi Manch are opposing the PESA draft on the basis of lack of provision 4 (o) of PESA Act that calls for implementation of Sixth Schedule in Fifth Schedule areas. Another activist named Robert, is pushing for MESA in the State Rules. The MLAs that are members of the TAC have opposed are in accordance with activists. MoPR never sent the draft Rules for review to the TAC but somehow during their meeting this became their agenda and four MLAs opposed the draft.

The then CM asked the MLA to give their rejection in writing but they have not given their objection in writing yet.

Everything has been done from our end, we have sent the draft rules to the court for formal drafting of the rules. So, the pendency for notification is from their end and not ours.

b. Before sending the draft to the court for formal drafting, were any changes made to the final draft?

We did some addition on the basis of observation and objections that we received from some organizations and people.

2.1.3 Meeting with Haldar Mahto and Sudhir Pal

a. What do you think about the draft PESA Rules of the state?

There have been traditional Gram Sabhas in the Scheduled Areas and they have all the rights that are necessary in the draft PESA Rules. They administration has in fact diluted the land acquisition provision in the draft rules.

Everything is in order in the state. Nothing happens in the state without decision and consent of Gram Sabha. So, the provisions that exist in PESA Rules are in accordance with the traditional rights of the tribals.

“There have been many Rules that the government has notified, what is one more Rule going to bring any change. The government is aware to keep the order weak and progress the law.”- Sudhir Pal

b. What are your views on Gram Sabha drafting plans for different government schemes like GPDP, DMF etc.

The authorities will not dilute the DMF to the Gram Sabha. The GPDP is irrelevant because 60% funds are tied to be sanctioned for water and sanitation. There is nothing much the Gram Sabha can do with very less funds in these government benefits. Whatever the Gram Sabha can do is on their own as seen in Kolhan-Khunti region. One of the kings in the region is demanding a separate country, with a separate constitution. They are denying Indian Constitution as it is not applicable to them. The reason they are giving is that when India attained independence it got rights over land that was under British Rule and because they were never under British Rule technically, they should be a separate country. Their grounds for demand are correct, if we look at it logically. In that case they can do whatever they like; they can print their own currency, have their own constitution etc.

c. If PESA Rules get notified, do you think that its implementation will percolate to the ground?

All the previous Rules and Acts like Chota Nagpur Tenancy Act, Santhal-Pargana tenancy Act, Wilkinson Rules etc have been in place for years now. Jharkhand state has implemented them in all Schedule Five areas. We are sure that PESA will be notified shortly and it will be successfully implemented on ground where the Gram Sabhas will be enabled to reap benefits under PESA.

d. In villages of Latehar, we observed that lease for stone mining has been given without the consultation of Gram Sabha. Does such practice exist in other parts of Jharkhand?

That may be only one exceptional case that you saw. This is not the case in the rest of Jharkhand. For instance, in Kolhan-Khunti region, the people are very aware of their rights and such a thing could never take place there. In that region, everything is done with the consent of Gram Sabha. This is not only limited to this region but this is a general practice in Jharkhand. What you saw in Latehar was an exception.

During conversations with intellectual of PESA in the state, it felt that the intellectuals are very optimistic, and hopeful for implementation of PESA in the state. Intellectuals that were involved in drafting of PESA Rules failed to identify the importance of mandatory Consent of Gram Sabha for land acquisition, leasing of minor minerals, including role of Gram Sabha in GPDP etc.

The PESA intellectuals had a very optimistic and bright picture painted in front of them based on their observations from Kolhan and Khunti region of Jharkhand. They failed to acknowledge that rest of Gram Sabhas in Jharkhand suffer and their position is not as strong as in Kolhan-Khunti region.

2.2 Focused Group Discussions

2.2.1 Village: Tataha

Gram Panchayat: Murwai Kala

Block: Barwadi

District: Latehar

Findings:

1. The village has generational pradhyaan. The traditional headman of the village mediates any cases of conflict in the village. In pre-digital era, the gram pradhyaan used to everyone in the village if any meeting were to be held.
2. The village has Kharwar, Baiga and Korwa tribes.
3. The villagers are forest dependent and have traditional measures to manage their resources. They collect firewood to cook food, and to perform rituals.
4. The forest protection and management committee of the village raised awareness among people to take measures to control forest fire. During Mahua flower collection, they encourage villagers to not fire the leaves and hand pick or collect Mahua flowers using broom.
5. They collect tubers and other medicinal plants for consumption and to treat ailments.
6. They have traditional practices for collection of Mahua flowers, marriage, conflict resolution and festivals.
7. In case of conflict resolution, the village sits together and usually try to bring together the two parties to a mutual understanding. It is interesting to note that the village do not label one person as guilty and vice versa. In their opinion both parties are guilty. One may be less guilty than other; hence, the decision of the village is unbiased.
8. In case, where *Panch* get together for conflict resolution, then both parties have to pay a fee of 500. That money is usually used to purchase community resources like carpet, chair, utensils etc. that are used in community gatherings like weddings.
9. The village conducts its Gram Sabha on 29th of every month. They have a dedicated Gram Sabha office where they keep their proceeding book, documents, posters for awareness programs etc.
10. Four tola of the Gram Panchayat sit together and have formed one Gram Sabha. They are; Purvara tola, Mahuata Tola, Korwa toli, and Bhalita.
11. They have faced some tiff with the forest department years back where the department asked them to evict and ruined their standing crop. Since, implementation of FRA they have not threatened us. They received their IFR titles some 5-6 years back.

Observation

1. The village had a ward member who is also up-sarpanch. But there seemed to be a rift between her and the villagers. She does not attend the monthly Gram Sabha meetings. Though the up-sarpanch claimed that she attends the meetings regularly, and intimates the villagers of all the new schemes that come up in the Panchayat office. When the villagers were asked if they knew about the schemes, they knew a few but did not know all of them.

2.2.2 Village: Karmahi

Gram Panchayat: Dundu

Block: Barwadi

District: Latehar

Findings:

1. The villagers are facing trouble with a new stone mining that had started.
2. The stone mining lease was granted to two contractors for two separate areas without their knowledge. The land marked for mining has their farming field and includes their homes as well.
3. Due to mining the ground water is being leached down. They have truded the river bed as well. Therefore, they are having problems with water supply as well.
4. There is a total of 24 tola in Dundu Gram Panchayat. Out of which 3 are in Gram Sabha Karmahi, namely; Lali, Bichalidhaga, and Dundu.
5. The villagers do not attend the Gram Panchayat meetings as it is far away from their village. Some even added that they don't even know when does the meeting take place in the Gram Panchayat Office.
6. The village has 100 houses. It has mixed communities namely; Kharwar, Ravi das, Lohra, Karbahi, some muslims are also present in the village.
7. There are lands under "Bihar Sarkar" in the village.

Notes

1. Non-agricultural lands that are wasteland come under category of "Bihar Sarkar". They are named so because they are based on old records and records have not been updated since annexation of Jharkhand state.

2. In Latehar, the records have not been updated since 1976.

Observation

1. The people do not have any connection with the administration. Hence, they lack the trust in the administration that it shall help them for their upliftment.
2. The lease for stone mining was given to contractors without conducting Gram Sabha.
3. The villagers were not aware of PESA Rules and other provisions that empower Gram Sabha against malpractices of mining etc.

3 Madhya Pradesh

3.1 Interaction with PESA Mobilizers in Balaghat

- a. How long have you all been working on this post?

We were appointed to this post in November 2023.

- b. What are the problems that you have been facing since your joining?

We are being assigned work other than PESA by Gram Panchayat sachiv and sarpanch. Some of the work includes involvement in Ladli Behna Yojna, Ayushman Yojna, PVTG housing scheme and PM Jan-Mann, updating KYCs of the villagers, data entry on the portal etc. Gram Panchayat Secretary and Sarpanch do not allow us to go on field to work for PESA awareness and notification of Gram Sabha under PESA. We report in the office, and do the work that has been assigned to us.

Sometimes, when there is a meeting to be held for another scheme, we are asked to attend the meeting. In case if we do not attend then we have got notice to take disciplinary action against us or for deduction in our salary.

- c. What is the response from the villages? Have you conducted any meetings in the village?

A few PESA Mobilizers complained that they are not being taken seriously by the villagers. Considering that, most of them are young females who have grown up in the same village. Elders of the village consider their work as redundant and do not pay much attention to them. This is one of the reasons that they are unable to raise awareness about PESA in their villages.

A few PESA Mobilizers mentioned that there have been instances where the sarpanch has disrupted the meeting of voters that came together for notification of Gram Sabha. Many such instances have taken place in the Paraswada block hence, new Gram Sabhas are not being notified.

d. Have you tried complaining about your working problem to your superiors?

We have complained about Gram Panchayat sachiv and sarpanch giving us extra work other than PESA to Block and District coordinator (appointed under PESA cell of M.P.), but they do not provide much help. They tell us to strike a balance between Gram Panchayat Sachiv, Sarpanch and our PESA work. They cannot do much because the block and district coordinators report to Janpad and Jila Panchayat respectively. They themselves are facing similar problems.

e. Did you all receive training on PESA Rules?

Yes, a training was conducted for 4-5 hrs where some officials came to tell us about PESA Rules. We received some training material and PESA Rules. We were asked to study Rules by ourselves which we have done but some provisions are hard to understand because the language used in the Rules is difficult to understand. We have a WhatsApp group of all the PESA Mobilizers, if we face any problem then we discuss it there.

f. Are you clear about the provisions of PESA Rules?

We are not clear about Gram Sabha under PESA and Gram Sabha under the Madhya Pradesh Gram Panchayat Act. We have a confusion about them, as the meeting under Madhya Pradesh Gram Panchayat Act is also called Gram Sabha and Sachiv, Sarpanch and Gram Sabha chairman is present in the meeting. The Gram Panchayat Sachiv tells us that this is Gram Sabha but according to the Rules there is a different Gram Sabha.

We would like to attend a 2-3 day training session where we learn about PESA Rules in detail. Such a training will clear our doubts and it will be easier to comprehend in comparison to trying to learn the Rules by ourselves.

3.2 Focused Group Discussion in Village

3.3.2 Village: Parsatola

Gram Panchayat: Parsatola

Block: Baihar

District: Balaghat

a. How many tolas are there in Parsatola Gram Panchayat?

There are two tolas in Parsa Tola Gram Panchayat other than Parsa Tola, namely; Hirapur Tola, Goga Tola/Rama Tola.

b. What tribes are present in the village?

There are Gond and Baiga Tribes in the village. Apart from Scheduled Tribes, there are Lohar, Gosai, Mahar, Katiya, and Pawar.

c. Tell us about how the village decided to sell and collect Tendupatta?

Mansharam Meravi ji who is a gram panchayat member told us that Gram Sabhas can independently sell and collect Tendupatta without involvement from the forest department. So, we along with 12 other Gram Sabhas decided to form a *Samiti* (committee) for collection and sale of Tendupatta. Mansharam Meravi ji motivated us to go to Gadchiroli district of Maharashtra to understand the challenges and process of selling of Tendupatta. We took inspiration from the model of Gadchiroli and we have tried to implement the same in our village. There are usual initial challenges that one would face regarding sale of Tendupatta.

d. Do you know about other provisions of PESA?

We have not heard about the word PESA before this meeting. We only know about the sale of Tendupatta due to Mansharam Ji.

Interaction with Chairmen of Gram Sabhas in Baihar block, Balaghat

a. How is PESA perceived in the villages? Is there awareness about PESA among people?

PESA is not taken seriously in the village, people do not understand PESA. The general perception is that nothing good is going to come out of PESA.

The constituted committees and the voters of the village do not know the importance of the PESA. Committees are only active if the chairman is active. The committees are not fully aware of their roles and responsibilities.

b. Where are the Gram Sabhas held?

The Gram Sabha is held in the Gram Panchayat office. The Gram Sabha takes place 4 times a year where the Gram Panchayat Secretary, Sarpanch and Gram Sabha Chairman sits.

c. In case of conflict resolution or to discuss the celebration of a festival, where do people meet?

According to one of the chairman, the people meet in the village or anywhere they find convenient. In case of conflict resolution people sit in 'mohalla' (neighbourhood) of wherever there is conflict or they sit in a public place.

d. Who addresses the meeting of the Gram Sabha that takes place in the Gram Panchayat office?

The Sarpanch and Sachiv address the meeting, they discuss all the agendas they have on the register. One of the Chairman said that their agendas are not included in the meeting even if they give it in writing to them. Because there are only 4 meetings every year there are a lot of agendas to be discussed so they only discuss agendas that they have written. Usually the people are also not interested in sitting for that long.

e. There are many villages that have filed for sale and disposal of Tendupatta this year. What are the problems that you have faced so far?

There are financial constraints that we are facing in the first year of selling Tendupatta. We are either pooling in the money or taking a loan from someone. We would like to receive some support from the forest department to help us with financial and infrastructure that is required to store Tendupatta especially during initial years.

Some Gram Sabhas claimed that they had submitted their application to sell and dispose Tendupatta before 15th Dec 2023 (cutoff date), yet their application was not accepted by the forest department as the name of their Gram Sabha was missing from the list issued by the forest department. Interestingly, their name was in the list issued by the revenue department but absent from the list issued by the forest department.

Three Gram Sabhas namely; Kongewani, Loodh, and Harranala of Baihar Block claimed that officials declined to accept their applications of Tendupatta collection. The forest department officials returned their application citing what will the Gram Sabha achieve from Tendupatta collection and what will they do with the money earned from Tendupatta sale.

3.3 Meeting with Officials in Balaghat district

a. We have received complaints from PESA Mobilizers that they are often burdened with work other than PESA. Are you aware of such practice happening?

Janpad CEO: They are only given other work when they have finished their PESA work.

b. Has PESA Mobilizers of Balaghat district finished all work under PESA like notifying Gram Sabhas and awareness of PESA?

*Janpad CEO remained silent on this question.

c. What role is the forest department in PESA?

SDO Baihar (forest division): We have raised awareness about the sale and disposal of Tendupatta by Gram Sabha. We have approved many applications that we received before the cut off date. Though we are concerned about increase in cases of forest fire, as people usually encourage ground fire to collect Tendu leaves. This causes a loss of biodiversity. We are trying to create awareness among people to not burn the forest floor.

d. What is the status of implementation of PESA in your district?

SDM Baihar: Panchayat deals with it, my exposure to PESA is not much. I do not know so well how the implementation goes, Janpad CEO will be able to elaborate more on it. As far as I know the panchayat has done a lot of work to create awareness about PESA. Largely we have used mobilizers to go door to door and tell about various provisions of this law and what are the privileges the Gram Sabha can have under this Act.

e. Have you received any training in PESA?

SDM Baihar: When I was posted in Pushprajgarh, we received the training there, but since being posted here, I have not done much work in PESA because as soon as I was posted here we had elections. So, I have been busy with that.

4 Odisha

4.1 Meeting with Subject Experts

4.1.1 Sandeep Patnaik

a. What is the current status of PESA implementation in Odisha?

Activists working on ground are aware about PESA and Gram Sabha powers. This is true especially for Koraput and Sundargarh districts. There have been multiple people's movements in Odisha as it is a resource rich area, and people want to protect their lands.

But officers are not aware of PESA. They tell us that it cannot be enforced here. This has happened in Sundargarh.

b. How is a Gram Sabha defined by Orissa Gram Panchayat Act?

Odisha has three different Acts for three tiers of panchayats i.e it has separate Acts for Gram Panchayat, Panchayat Samiti and Zilla Parishad. All the acts are pre-73rd Amendment. They all fail to give the necessary powers to people to function as institutions of self-government.

The definition of Grama itself is problematic. The OGP Act has a condition that a Grama should have a population size between 2000-10,000. Also a Grama can be one or more than one village. The two different definitions of what is a village and what is a Grama is confusing. Also, neither definitions consider the cultural or physical context of a natural village.

People in scheduled areas say that their Palli Sabha is Gram Sabha, but the government does not accept that. The government will only accept the Gram Sabha of Gram Panchayat as the legitimate Gram Sabha.

After PESA was implemented the State should have made necessary changes in all its laws like Odisha Minor Mineral Concession Rule etc. But the government only made cosmetic changes. The government has not taken any efforts to reconstitute Grama/village as per PESA Section 4(c). The state should form a Villages Reorganisation Committee to revamp Odisha's Panchayat Raj in accordance with PESA in Scheduled Areas.

c. Have there been any disputes related to land in Scheduled Areas?

People of Dongria Gondh reside in the Niyamgiri hills. They believe the hills are sacred as their king Niyam's spirit resides there. The community, a PVTG tribe, has also received heritage rights under FRA.

In 2003, the Government of Odisha signed a MoU with Vedanta Aluminium Ltd for construction of alumina refinery and coal based power plant. Vedanta received environmental clearance from MoEFCC initially. People protested strongly against Vedanta. Around 120 villages were going to be affected by this project. As this is a PESA area, Gram Sabha should be the decision making body. Despite 120 villages being affected, the state government chose only 12 Gram sabhas to make this crucial decision. In this case, the state accepted a gram sabha of a village with just two families. Here they had no problem notifying a village with such a small population because it was for their benefit. But if a community wanted to get their village notified as a separate village, the government

would not accept. Thankfully, all the villages unanimously voted against the mining project.¹³

4.1.2 Meeting with Maheshwar Swain, Director of Panchayat Raj Department

Date: 07/02/24

a. What is the status of PESA Rules in the State?

The state has published the English version of the draft Rules last year. But, it has received many objections. The Rules were supposed to be notified now, but many organisations asked for extension of the deadline for submitting their objections. On 9th January, the deadline was extended by 2 more months.

b. What are some of the objections you have received on draft Rules?

The director said that he has not gone through the objections yet. One of the staff members brought in the objections during the meeting. One of the objections, according to the Director, stated that there is no provision for conducting Gram Sabhas at village level.

The Director raised concern to the objection saying it will make the decision making process difficult. He felt that if every hamlet starts conducting their own Gram Sabhas, it will become difficult to manage. How will they make any decision? In land acquisition cases, if 3-4 hamlets want to give their land, but one of them does not, then how will they make a decision? This will delay the decision making process.

c. Is there a dedicated PESA cell in the department?

There are PESA coordinators at district and block level. They are appointed by RGCL. But there is no Coordinator at State level. PESA is not given much preference.

They are trying to build a committee of PESA experts at State level. PESA implementation is at an infant stage in ODISHA.

¹³ *As per land conflict watch, the Board of Directors of Vedanta have approved the expansion of their Langigarh plant, making it the world's largest single location alumina refinery complex, while local residents continue to protest against it.*

d. Why do the draft Rules lack procedures on how Gram Sabha can monitor the execution of any work by Gram Panchayat?

If all the procedures are written in the draft Rules, they will come lengthy. The department will pass separate executive instructions on how Gram Sabhas can supervise work undertaken by Gram Panchayats.

e. What is the procedure followed in land acquisition for mining?

In cases of mining, MFPs and land acquisition, PESA Gram Sabha is mandatory. If the PESA Block does not approve, then the source is not auctioned.

Note: The Gram Sabha is conducted at Panchayat level. Not all villages in a Panchayat may approve or disapprove of giving of their land for any project. Also there is no mention of consent of Gram Sabhas in such cases, only consultation.

4.2 Focused Group Discussions in Villages

4.2.1 Village: Dongajar

Date: 08/02/24

Gram Panchayat: Kinabaga

Block: Bambra

District: Sambalpur

a. How many padas are there in this village?

There are seven padas in the area; Chattanpada, Prempada, Gondpada, Kisanpada, Mundapada, Agripada, Navapada.

b. How do you solve disputes in your village?

Conflicts are resolved at pada level. When there is any issue, a *Behra* will call for a meeting. Every pada has its own Behra. There will be one person from every community who will aid the conflict resolution process. Tribals and non-tribals will sit together to resolve the conflict.

c. How does the village bear the cost of festivities or any communal gathering?

Every house contributes equal amounts of money for village events. Everyone is also made aware of how much money was spent, where it was spent, how much is left etc.

There is transparency in financial transactions of a traditional Gram Sabha.

d. Do you attend Gram Panchayat meetings?

The Gram Panchayat office is 5 kms away. All the participants in the FGD said that they don't attend the GP meetings. They said if the GP meeting was conducted in their village, they would have attended it. They said most GP meetings are to announce the beneficiaries of a scheme like PM Awas Yojana. But not everyone gets the benefits. If 5 people have given their name, only 2-3 get the benefits. Despite repeatedly registering for a scheme, individuals don't get it. So, people start losing interest in attending the meetings.

The village had proposed road work in Gram Sabha 3 years ago. But the work is still pending.

e. Do you know about GPDP?

None of the participants of FGD knew about GPDP. Even the women who are part of Self-help groups did not know about GPDP.

Neither were they aware of e-gramswaraj.

4.2.2 Village: Mundakata

Date: 09/02/24

Gram Panchayat: Kesaibhal

Block: Bamra

District: Sambalpur

(a) How many padas are there in this village?

There are seven padas in the village; Dhurwa verna, Bhanu pada, Tangorgoda, Udorpada, Naikpada, Rairga, Borkholi.

The FGD took place in Naikpada. There are multiple communities like Gond, Lohar, Khuriya living in the same hamlet.

(b) What resources do you extract from forests?

They have a traditional system of extraction of oil from particular seeds. They extract tubers for eating, by using a spear made of bamboo. The participants also told us about some medicinal plants and their usage. They added that the number of medicinal plants has reduced in the forest.

All 7 padas together made a single claim for CFRR. They have received title for 550 ha.

(c) Who was managing the forest before you received CFRR?

According to the Rules of 1989, there was a committee constituted for patrolling the forests. If anyone wanted to take anything from the forest, the person had to seek permission from the committee and the forester. Villagers would have to ask for permission to take even small pieces of wood or rafter.

A meeting of the committee (Van Suraksha Samiti, VSS) was held every month on the 13th. The forester was also involved in the meetings. Before VSS was formed, the jungle was being destroyed. People from outside would come and cut trees and sell.

When there was VSS, a participant said, they were getting security. But as the village has received CFRR in 2018, they have also received their rights on the forest.

(d) If there is any dispute in the village, how do you resolve it?

If there is any dispute, then the village will sit together to resolve it. The villagers will analyse the situation, if there has been any financial loss, then how much. The person who is wrong will have to pay a fine to the one who is wronged. The villagers will decide the penalty amount. If the person cannot pay the fine, because he/she is poor, then the villagers will discuss and negotiate the amount, till an understanding is reached.

Both parties have to give some amount like 100 rupees to the committee (traditional committee). 50 rupees is taken by the committee, and 50 is spent on tea, snacks etc.





ABVKA- All india Headquarter, Vanvasi Kalyan Ashram, A. & P.:
Jashpurnagar, Dist.: Jashpur, Chhattisgarh

TEER- 1st Fl, Sudhanshu building, behind Sancheti towers,
Ashok Stambh, 431/K Agra Road Nashik (Maharashtra)
PIN 422001