

**PESA, Left-Wing Extremism and Governance:  
Concerns and Challenges in India's Tribal Districts**

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## **PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts**

*“There has been a systemic failure in giving tribals a stake in the modern economic processes that inexorably intrude into their living spaces...The systematic exploitation and social and economic abuse of our tribal communities can no longer be tolerated.”*

**Manmohan Singh, Prime Minister of India, November 2009**

*“When I told a govt. official that PESA allows us to determine our policy on liquor trade in the village, he shot back, “Are you trying to teach me the law? If you are so knowledgeable about the law, why are you living here in your village in the forest? Why don't you go and speak in the Orissa assembly?”*

**Fulsingh Naik, resident of Mandibisi (Rayagada, West Orissa), December 2009**, recounting a conversation he had from inside a prison cell with a policeman, who had jailed him for leading community protests against a country liquor shop in their village.

*“Is government meant for the people or the powerful?”*

**Mahangu Madiya, a resident of Dhuragaon (Bastar, south Chhattisgarh), July 2009**, on the government's efforts to forcibly acquire his village's farmland for the private steel-manufacturing giant, Tata Steel Limited, ignoring opposition by village gram sabhas.

This chapter explores the functioning of the Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA from here on), which governs areas in nine states<sup>1</sup> of India, covered by the Fifth Schedule of the Indian Constitution. Tribal communities make up 8.2% or approximately 8 in 100 Indians – an economically and culturally vulnerable and distinctive group. The 1996 landmark law recognized this, and the historic injustices meted to them. Its passage—an act of great political commitment—attempted to shift the balance of power towards the communities by providing a mechanism for self-protection and self-governance. By recognizing that tribal communities are ‘competent’ to self-govern, we were, in effect, recognizing the validity of their way of life, value systems and worldview (**See Annexure 1 - The Act**).

Today, it is universally acknowledged that the law has much to achieve on its promise of securing people's participation, as the keystone of a meaningful democracy. The Ministry of Panchayati Raj mandated the Institute of Rural Management to make an independent assessment

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<sup>1</sup> Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Orissa and Rajasthan

of ‘the correlation between **the promise and the reality of self-governance** in selected states, especially those which have witnessed difficulties due to alternate mobilisations (and counter-mobilisations)...The report will seek to build an assessment of issues and some common grounds for institutionalisation of local self-governments in such extremist affected states.’

This analysis starts by sketching a brief background to PESA, and outlining how the act intended to improve the lives of some of India’s most beleaguered sections, when it was passed in 1996. It then analyses the key challenges to the effective functioning of PESA today.

The second section then analyses in detail the unfinished legislative agenda regarding the PESA. It does this by firstly looking at the unfinished legislative and executive work on the law in some key states of India.<sup>2</sup>

The third section moves to the ground in order to put a human face to the neglect of the act through selected case studies. It thus attempts to capture some of the big themes that currently militate against PESA, as expressed by people, for whom life is increasingly a quest for survival. Placing at the centre stage, peoples’ experiences of PESA and governance might make the analysis appear skewed, or even one-sided. But we believe that these voices from the ground are poorly heard in policy making and implementation—for a complex of reasons, from the community’s entrenched marginalisation to the absence of written traditions for communication—and hence need be given primacy. It looks at the failure of PESA and the ‘alternate mobilisation’ that has happened. Though not included in this report, the larger research elsewhere also outlines the complex intersection of what would be justifiably called governance failure and alienation, and its coterminous relationship with the phenomenon of left-wing extremism, i.e. the currently banned Communist Party of India - Maoist (However, there are a range of left-wing Naxal groups operating on the ground in PESA areas). The experience of fieldwork, which even entailed physical dangers, suggests that there is a veritable crisis in several PESA areas, with despair, insecurity and a breakdown of the rule of law, and access to justice within the constitutional framework.

A final section lists some ideas, which would help institutionalize and actualize PESA in letter and spirit. These are entirely collaborative, and have emerged through IRMA’s fieldwork among communities, as well as in the course of many conversations with distinguished and tireless workers in the field. While the former, namely the people, sought policies that respected their dignity and ways of living, most tribal rights advocates stressed that a PESA-centric approach was essential to bring in the inclusive governance, which would be critical for the success of India’s current attempts for inclusive growth.

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<sup>2</sup> This was primarily done by speaking to officials in the central and state governments (Andhra Pradesh, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh and Orissa). Unfortunately, and despite repeated written and oral requests, some of the state officials, particularly in the district administrations, were extremely unresponsive to the exercise.

The urgency and indispensability of this approach has already been cogently made by recent committees such as the Planning Commission-appointed group's report, 'Development Challenges in Extremist Affected Areas' (2008). Prime Minister Manmohan Singh (2009) has seconded this perspective: 'We cannot have equitable growth without guaranteeing the legitimate rights of these marginalized and isolated sections of our society. In a broader sense we need to empower our tribal communities with the means to determine their own destinies, their livelihood, their security and above all their dignity and self-respect as equal citizens of our country, as equal participants in the processes of social and economic development.'

## **1. PESA: Recasting the Balance of Power**

Post-independence India's policymakers, starting most notably with the then Prime Minister Jawaharlal Nehru, have been continually seized by the issue of crafting public policies sensitive towards the vulnerable tribal communities. Through the decades however, there has also been a constant awareness of the wide gulf between the stated intent of protection in the Constitution, and the ground reality of routine exploitation.

This is evidenced in the series of reports the government commissioned from time to time, which pointed to the deepening marginalisation of these communities. Having lived since generations in a close and dependent relationship with nature in mostly resource-rich areas, they were paying an inordinate, and often devastating price, for India's chosen development model. Violation of their land and forest rights, even leading to complete displacement or dispossession; exploitative economic relations with the world at large; and the erosion of their cultural practices were some of the harsh, yet common realities in the life of the tribal community.

In 1996, the Parliament passed the Panchayats (Extension to Scheduled Areas) Act or PESA, with the political class acknowledging the dire need to protect the rights and resources of the communities in Schedule V areas, by recognizing and upholding their right to self-governance. The law, according to Dileep Singh Bhuria, the Chairman of the committee that worked on it, could 'mark the beginning of a new era in the history of tribal people...'

How was this act a departure? PESA recognized the gram sabha (a habitation was the natural unit of the community, and its adult members constitute the gram sabha, as against the elected gram panchayat) to be pre-eminent. The gram sabha was recognized as being *competent* to act on a range of powers, including:

- 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 ownership of minor forest produce

- the power to enforce prohibition, or to regulate or restrict the sale and consumption of any intoxicant
- the power to exercise control over money lending to the Scheduled Tribes
- the power to exercise control over institutions and functionaries in all social sectors
- the power to control local plans, and resources for such plans including tribal sub-plans
- the power of prior recommendation in granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction
- the right to be consulted on matters of land acquisition
- the power to issue utilisation certificates for government works undertaken in their village

PESA thus constructs tribal self-governance around certain key features. The first feature through Sec. 4 (b) fundamentally departs from colonial praxis by affirming that an organic self-governing community rather than an administrative unit like a village is the basic unit of self-governance.

PESA also recognizes a habitation to be a natural unit of the community, whose adult members constitute the gram sabha. In Sec. 4 (d) and 4 (m)(ii), communities are declared competent to safeguard and preserve their culture and tradition, exercise command over natural resources, enjoy ownership of minor forest produce and adjudicate their disputes. Under Sec. 4 (m) (vi), the village assembly is empowered to monitor all state institutions within its jurisdiction e.g. schools, health centres etc, with the functionaries under its control.

Sec. 4 (i), (j), (k) & (l) mark a departure from colonial laws like the Land Acquisition Act, Forest and Mining Acts, and ordain that communities must be consulted on acquisition of, or access to land and land based resources. They also affirm that the tribal community has the capability and competence to adjudicate on, and act in its wisdom to put an end to all exploitative relations including land alienation, money lending, market relations and alcohol trade. This establishes the supremacy of the gram sabha, whose power cannot be usurped by a superior body.

Thus PESA is a unique legislation, often described as a Constitution within the Constitution, which attempts to bring together in a single frame two totally different worlds - the simple system of tribal communities governed by their respective customs and traditions, and the formal system of the State governed exclusively by laws. The second important aspect of PESA is that it spells out a general frame of reference for governance in the Scheduled Areas. It envisages a number of options that may be exercised in each case by the concerned authorities depending on the local situation. It is presumed that the alternative chosen will not violate the general spirit of PESA. In the words of a key figure involved in the grassroots movement for the passing of the

legislation, 'PESA moved from development delivery to empowerment; from implementation to planning; from circumscribed involvement to conscious participation (Prabhu, 2004).'

However, in the decade-and-a half since it was passed, the experience of PESA has been tragically stilted. The legislative and executive work, which state governments were meant to undertake, still remains incomplete. Further, as the above reading of the law shows, PESA envisaged a radical shift in the balance of power - from the state apparatus and from economic and political elites, to the community. However, a community can exercise this wide range of powers meaningfully only when they have access to adequate information and capabilities, in alliance with other arms of the state. All this has been given inadequate attention. In a way thus, the entire effort of all organs of government ought to have been directed towards building up the necessary capabilities such that the 'constitutional/statutory' competence mandated in communities get fullest play. This does not seem to have happened. On the contrary legal and administrative subterfuge has kept the provisions of PESA as a set of aspirations and the agenda of self governance remains postponed.

Given that the challenges to the tribal community's way of life have severely intensified in the past decade with a liberalizing economy, wooing of private capital for industry, the profitable rush for natural resources (in particular, minerals and farmland) along with the phenomenon of left-wing insurgency, which evokes people's problems, the neglect of PESA has had particularly tragic and violent implications. Having built up over the past decade, they now demand a sensitive and urgent redressal by us as a people.

## **2. PESA: The Unfinished Legislative Agenda**

When passed in 1996, the central PESA envisaged that the nine states with Schedule Five areas would enact their own legislations devolving power to their respective tribal communities, as well as amend pre-existing laws to bring them in harmony with PESA within a year:

"A State legislation on the Panchayats...may be made...in consonance with the customary law, social and religious practices and traditional management practices of community resources." (PESA, 4.a)

## PESA IN SELECT STATES

<b>The Central PESA Act's provisions</b>	<b>Andhra Pradesh</b>	<b>Chhattisgarh</b>	<b>Jharkhand</b>	<b>Gujarat</b>	<b>Madhya Pradesh</b>	<b>Orissa</b>
Section 4 (i): The Gram Sabha or the Panchayats at the appropriate level shall be consulted before acquiring land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in Scheduled Areas	The AP Act has made provisions to consult the Mandal (Block) Parishad before acquiring land in Scheduled Areas. However, planning & implementing of such projects will be coordinated at the level of the state government.	The Chhattisgarh Act has made provisions that before acquiring land for development projects, the Gram Sabha will be consulted.	The Jharkhand Act has no provision in this regard.	The Gujarat Act provides for the taluka panchayats to be consulted before acquiring any under the Land Acquisition Act, for developmental projects, and before resettling or rehabilitating persons affected by such projects	The MP Act has made provisions that before acquiring land for development projects, the Gram Sabha will be consulted.	The Orissa Act said the District Panchayat shall be consulted before acquiring land. The Revenue department has issued instructions to Collectors to obtain the Gram Sabha's recommendation during land acquisition. The law also ensures bureaucratic control over the Gram: 'The Collector or such other officer or person specially authorised on the behalf of the State Government shall exercise general powers of inspection supervision and control over the exercise of powers, discharge of duties and performance of functions by the Gram Panchayat
<b>Section 4 (j):</b> Planning & management of Minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;	The AP Act has assigned this power to either of the three tiers of Panchayats as the case may be.	The Chhattisgarh Act has assigned powers to the Gram Sabha. Intermediate and District Panchayats also have powers to plan, own and manage minor water bodies	The Jharkhand Act has assigned this power to the Gram Panchayat.	The Gujarat Act entrusts this power to the Gram Panchayat	The MP Act has assigned functions to the Gram Sabha to plan, own and manage bodies situated within its territorial jurisdiction.	The Orissa Act has assigned this power to the District Panchayats.
<b>Section 4 (k):</b> The recommendations of the Gram Sabha or the	Recommendations of the Gram Panchayat shall be considered prior to grant	Prior recommendation of the Gram Sabha is mandatory	The Jharkhand Act has no provision in this regard	The Gujarat Mines & Minerals (Regulation & Development) Act provides that prior to	Prior recommendation of the Gram Sabha is mandatory	The Orissa Act has assigned this power to District Panchayats

Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals by auction;	of prospecting licenses.			granting the quarry lease and quarry permit, recommendations of the Gram Panchayat shall be obtained.		
<b>Section 4 (l):</b> The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be mandatory for grant of concession for the exploitation of minor minerals by auction;	The AP Act has provided that prior recommendations of Gram Panchayats shall be considered	The Chhattisgarh Act has no provision in this regard	The Jharkhand Act has no provision in this regard	The Gujarat Mines & Minerals Act provides that prior to granting the quarry lease and quarry permit, recommendations of the Gram Panchayat shall be obtained	Prior recommendation of the Gram Sabha is Mandatory. Auctions are done by the state government and royalties must be paid to the gram sabhas/panchayats	The Orissa Act has assigned this power to the District Panchayat
<b>Section 4 (m)(i):</b> The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;	The AP Act has assigned this function either to the Gram Panchayat or the Gram Sabha.	The Chhattisgarh Act has assigned this power to the Gram Sabha.	The Jharkhand Act has Assigned this power to the Gram Panchayat	The Gujarat Act has no provision as prohibition extends to the whole state.	The MP Act says the Gram Sabha has the requisite powers to brew liquor under certain conditions	The Orissa Act has assigned powers to the Gram Panchayat to be exercised under the direct supervision of the Gram Sabha.
<b>Section 4 (m)(ii):</b> The ownership of Minor Forest Produce;	The AP Act says that Gram Panchayat or Gram Sabha as the case may be, shall exercise powers in this matter, as may be prescribed.	The Chhattisgarh State Federation of Minor Forest Produce is empowered to control trade, and must distribute dividend and bonus to the shareholders.	The Jharkhand Act has assigned these powers to three tiers of Panchayat	The Gujarat Act has given the right to ownership of MFP to Gram Panchayat. Sale proceeds shall be paid into & form part of the village fund	The 'Madhya Pradesh Laghu Van Upaj (Gram Sabha Ko Swamitwa Ka Sandan) Vidheyak 2000' submitted by the Forest Department. of MP is under revision to include issues like 'Ownership of Minor Forest Produce'. 'Jurisdictional	The Orissa Act has assigned powers to the Gram Panchayat to be exercised under the direct supervision of the Gram Sabha.

					Issues; etc.	
<b>Section 4 (m)(iii):</b> 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 AP Act says that the Gram Panchayat or the Gram Sabha shall perform such functions	The Act says that the Gram Sabha is endowed with such powers.	The Jharkhand Act has assigned this power to District Panchayats.	The Gujarat Act has assigned this power to the District Panchayat.	The Act says that the Gram Sabha is endowed with such powers.	The Orissa Act has assigned powers to the Gram Panchayat to be exercised under the direct supervision of the Gram Sabha.
<b>Section 4 (m)(iv):</b> The power to manage village markets by whatever name called;	The AP Act has assigned powers to the Gram Panchayat or the Gram Sabha as the case may be	The Chhattisgarh Act provides that the Gram Sabha shall have powers to manage village markets and melas through the Gram Panchayat	The Jharkhand Act has assigned this power to all three tiers of Panchayats.	The Gujarat Act has assigned this power to Gram Panchayats.	The MP Act provides that the Gram Sabha shall have powers to manage village markets and melas through the Gram Panchayat	The Orissa Act has assigned powers to the Gram Panchayat to be exercised under the direct supervision of the Gram Sabha.
<b>Section 4 (m)(v):</b> The power to exercise control over money lending to the Scheduled Tribes;	The AP Act states that either the Gram Panchayat or the Gram Sabha shall perform such functions	Chhattisgarh Act has amended its laws preventing moneylending in PESA areas, and giving preventive powers to the Gram Sabha.	The Jharkhand Act has assigned this power to the District Panchayat.	The Gujarat Act has assigned this power to the Gram Panchayat.	The Gram Sabha is endowed with such powers.	The Orissa Act has assigned powers to the Gram Panchayat to be exercised under the direct supervision of the Gram Sabha.

As the above table indicates, states have varyingly adopted PESA provisions in their state panchayat acts with Madhya Pradesh and Chhattisgarh having undertaken the most work on this. However, this was only the first of a series of tasks necessary to make PESA effectual.

To begin with, since PESA is founded on a ‘self governed village community’ component it is paramount that the unit of self-governance is an actual self-governing village community itself. Participatory democracy, the second component, inheres in the praxis of a face-to-face self-governing community, like two sides of a coin. While some states have reworked the definition of a village in their panchayat legislations, on the ground administrations continue to practice their earlier revenue definitions of village. Thereby the village consists not just of 10-12 scattered hamlets, but several revenue villages are clubbed together to form a gram panchayat. This effectively precludes the functioning of a ‘face to face’ community as envisaged in central

Act and eliminates the likelihood of a functioning gram sabha, whose members are empowered to assert their rights and enact their responsibilities.

In many instances, the states have diluted PESA's power in the wording of their legislations, and the rules governing their implementation. Barring Madhya Pradesh and Chhattisgarh, most state legislations have given the bulk of the powers to the gram panchayat, and not the gram sabha. This runs contrary to Section 4 (n) of PESA. Moreover, neither the state legislations nor the rules adequately address how communities might exercise their powers with regard to the issues of land, displacement, liquor and so on. They have also failed to put in place redressal mechanisms that communities can access, when these powers are violated. Only the Madhya Pradesh Act's provisions address this to some extent on the issue of land alienation, by allowing a community to seek official redressal after three months if it is unable to reclaim alienated land by itself.

On the other hand, some state acts in fact even put barriers to a Gram Sabha's powers under PESA. For example, Subsection 10.8 of Jharkhand 2001 Gram Panchayat Act says that the powers of the Gram Sabha defined in section 10(1.a) i.e. formulating schemes for economic development, and section 10(5) i.e. powers of the Gram Sabhas in Scheduled Areas, will not affect the rules and jurisdiction of the government. Subsection 10.9 states that 'the state government by ordinary or by special order will be able to enhance the power of the Gram Sabha and withdraw them as well.' Similar provisions are there in the Act's Sections 75(d), 76(d) and 77, which outline the village Panchayat, Panchayat Samiti and District Panchayats rights and duties. In these sections also, the same conditions have been repeated, thus ensuring that the government retains effective powers, rather than the gram sabha.

Some of the critical areas with regard to the unfinished legislative agenda are as under:

### **Resources:**

What is the status of the laws enacted with regard to the community resources by the state and the central legislative bodies? States have dealt with this in different ways. Madhya Pradesh has proceeded with accepting the provisions of PESA unequivocally as constitutional provisions. Accordingly, the management of natural resources, under section 129c (iii) of the Madhya Pradesh Panchayat and Gram Swaraj Act, is envisaged to be 'in accordance with its tradition and in harmony with the provisions of the constitution.' Thus nothing in the tradition of the community can be invoked that may be against the basic tenets of the constitution. In so far as the ordinary laws on the subject are concerned, the said provision of the Madhya Pradesh Act envisages 'due regard to the spirit of other relevant laws for the time being in force'. Chhattisgarh has also followed this approach. Jharkhand has also gone by the same precedent.

The tenor in Orissa's law is different. The competence of the grama sasan under section 5(6) of the Orissa gram panchayat act is qualified by the clause 'consistent with the relevant laws in force and in harmony with basic tenets of the constitution'. A plain reading of this clause would suggest that the relevant laws are superior, and accordingly PESA should be adapted suitably.

In most states, the enabling rules for the gram sabha's control over prospecting of minor minerals, planning and management of water bodies, control and management of minor forest produce, dissent to land acquisition are not yet in place, suggesting reluctance by the state governments to honour the mandate of PESA. In states like Andhra Pradesh and Gujarat the rules are yet to be framed for PESA. In Andhra Pradesh, draft rules were prepared in 2007, but they have still not been notified because they have to be put for approval before the state Tribal Advisory Council. Without the rules, the operation of PESA on the ground becomes null and void. As one analyst pointed out, 'In such situations, panchayats work as extensions of bureaucracy, rather than representatives of the people.'<sup>3</sup>

### **Land:**

The power envisaged for the gram sabha in respect of 'prevention of land alienation as also restoration of illegally alienated land' is unequivocal. However suitable provisions in the Panchayati Raj Acts or the relevant land regulations have not been made. The only exception is to that is the state of Madhya Pradesh and now Chhattisgarh. A clear and categorical provision has been added in the Madhya Pradesh Land Revenue Code after the enactment of PESA, which empowers the gram sabha to restore the unlawfully alienated lands to the tribal landowners. A unique feature of this law is that in case the gram sabha is unable to restore such lands it has been empowered to direct the sub-divisional officer in this regard who shall restore the possession within 3 months.

Thus 170-b (2a) 'if a gram sabha in the scheduled area...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 ...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'. This radical provision has remained virtually unimplemented for the simple reason that no rules have been framed in this regard. Further, to ensure actual devolution, a state's pre-existing laws had to be amended in line with the provisions of PESA. In all the states barring Madhya Pradesh and Chhattisgarh, land acquisition acts have not been amended in line with the provisions of PESA.

The process of consultation before acquisition of land, as envisaged under section 4(i) of PESA, has not been formalized in most of the states. The state of Madhya Pradesh (including Chattisgarh), however, has made elaborate rules in the year 2000 about consultation with concerned gram sabhas before acquisition of land. These rules envisage 'consultation with gram sabha before issuing notification under Section 4 of the Land Acquisition Act.' A detailed

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<sup>3</sup> IRMA conference on PESA, February 2010

procedure has been prescribed so that consultation is transparent and informed. The objective is to enable the people to come to a rational decision based on facts. The collector and a representative of company are mandated under rule 3(vi) to attend the final meeting of the gram sabha before it formally adopts a resolution for or against the acquisition. Thus, theoretically there is a paradigm shift in a crucial aspect of governance concerning acquisition of land in favour of the people. The proceedings in the open assembly of the gram sabha precede the proceeding in the court of the collector. The collector is expected to satisfy the people in the natural familiar setting of the gram sabha, where the people feel empowered, before he starts the formal process of land acquisition.

It is, however, a matter of deep regret that these rules are not being followed in their true spirit. There are cases where the formal resolutions of gram sabha expressing dissent have been destroyed and substituted by forged documents.<sup>4</sup> What is worse, no action has been taken by the state against concerned officials even after the facts got established. The message is clear and ominous. There is collusion in these deals at numerous levels.

Even in these two states, which have done the most extensive work among the PESA states on their legislations, the gram sabhas are only given the power of consultation and not consent, thus diluting the principle of self-governance. Further the gram sabhas are being convened at a level much larger than a habitation. The progressive edge of PESA gets diluted further as the term consultation is not defined properly nor have state governments outlined the ways of recognizing a negative response from the community towards acquisition.

### **Mining and Mineral Resources**

Sub-sections 4(k) and 4(l) of PESA envisage prior consultation with gram sabhas before grant of leases etc, of minor minerals. Despite the directions issued by the ministry of Mines and Minerals the action in respect of consultation before lease of minor minerals is granted has been rather poor. The rules made by the government of Madhya Pradesh (including Chhattisgarh) concerning minor minerals, however, can be said to be most progressive. The rules made under the Mines and Minerals (Regulation & Development), Act 1975 have formally divided minor minerals into two categories: (i) Schedule-i (specified minerals) and (ii) Schedule ii (other minerals). All quarries of annual value up to Rs 2.5 lakhs; above Rs 2.5 lakhs but up to 5 lakhs and above Rs 5 lakhs but up to 10 lakhs in respect of minerals specified in schedule ii except stone quarries for crushers and clay quarries for tiles and bricks in chimney bhattas, have been transferred to gram panchayats/ janpad panchayats/zila panchayats respectively. The rules further envisage that ‘quarry permits shall be granted and renewed by the respective panchayats, after obtaining prior approval of the gram sabha of the panchayat in which the quarry area is situated.’ In the case of other minerals in Schedule i or Schedule ii, however, consultation with gram

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<sup>4</sup> Personal interactions, community interviews during the fieldwork.

panchayat alone, ignoring the gram sabhas totally, has been made obligatory. This is a blatant negation of the spirit of PESA.

To sum up, a comparative analysis suggests that the legislations in the States of Madhya Pradesh and Chattisgarh are nearest to the original provisions of PESA. Other states have significant legislative work left to undertake to actualise the Act. However, all the states are faring poorly on implementing these provisions meaningfully on the ground. It is tragic that in none of the states, the Governor, who is accorded limitless powers by the Constitution to ensure the upholding of PESA, has monitored or intervened.

There seems to be no explanation for these widespread delays other than the fact that PESA is low on the political and executive agenda. Efforts to honour it do not extend beyond inter-department communications. One official in the Panchayats Department of the Orissa state government said, 'We write to the other line departments from time to time reminding them to amend their laws. But they have not done it yet'.<sup>5</sup> An official from Chattisgarh argued that cultural factors and the legacy of exploitation in states like his also militate against a reformist law like PESA, 'I admit that there is still a lot we have to do to implement PESA on the ground in its true spirit. Because of the trader culture in the state, the upper and middle class person's attitude is that the section below me should not become aware, so that I can easily exploit them. For example, this is clear in the low rates traders paid tribals while buying tendu leaves from them.'<sup>6</sup>

In December 2009, the Ministry of Panchayati Raj sent the nine state governments a set of draft PESA rules as a potential template, but this was not accompanied by a timeframe for action. Even here, in some aspects, such as land acquisition, these rules do not adequately address the challenges as they exist on the ground today, and need to be strengthened. Further, while these draft rules are laid out mandating the devolution of power to the community, the draft document does not list any punitive measures for violation of rules. In the light of the PESA experience of the past 15 years, it is unlikely that these rules, unless accompanied by well thought-out punitive measures or redressal mechanisms, will have their intended effect of empowering the community.

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<sup>5</sup> Personal interview, December 2009.

<sup>6</sup> Personal interview, July 2009.

## **The Governor's Role**

The Constitution entrusts the Governor the task of ensuring 'peace and good governance' in Schedule Five areas, with absolute powers over the state government towards this end. Governors were also required to submit an annual report to the Parliament, which was meant to be an independent assessment on administration in Schedule Five areas. However, since the enactment of PESA, Governors have slowly but surely been neglecting their duties towards the law, and towards tribal communities, even as the prospects of 'peace' and governance based on participatory empowered peoples involvement have deteriorated in many PESA villages.

A Planning Commission-appointed committee (2008) commented on this failure: 'It is a pity that no Governor has ever cared to keep a watch over the legislative activity of the state or the centre with reference to the responsibility implicit in the powers vested by Paragraph 5(1) of the Fifth Schedule.' Another observer (Verghese, 2009) added, 'Most governors, who have a special responsibility for tribal guardianship under the Fifth Schedule, have failed to live up to their high responsibility and have never been taken to task for gross dereliction...all governors should receive instruments of instruction from the president regarding their constitutional mandate for tribal areas and be held strictly accountable.'

On the ground, communities and organisations express the feeling of being let down by the Governor's office. They point out that the Governors have not responded in a single instance to their petitions for intervention in crises that threaten them, such as deepening clashes over land, mining or police excesses. An expert argued, 'The recent trend of appointing retired police officers as Governors in Schedule Five areas is damaging the cause of PESA. Coming from a career of service in the police force, they are proving insensitive to tribal aspirations, and are naturally favoured towards a powerful police and security apparatus in these areas.'<sup>7</sup>

As required by Paragraph 3 of Schedule Five, Governors are required to submit a report annually, which is their independent assessment of the quality of governance in PESA areas. An analysis of annual reports submitted by the Governor to the Centre in the past years<sup>8</sup> shows that these are hardly objective assessments as required by law, but largely a laundry list statement of physical targets and financial allocations under various schemes as reported by the state government's departments. None of the reports had analysed or even touched upon the themes of displacement, alienation, poor governance and insurgency, which are the dominant facts of life in many PESA areas. In some cases, reports of successive years have reproduced exactly the same

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<sup>7</sup> Conference on PESA, February 2010

<sup>8</sup> Recent annual reports from the states of Andhra Pradesh and Orissa were analysed

paragraphs under certain subsections, suggesting how the exercise is now one of going through the motions.

Responding to a RTI request asking for these reports, one official in the central government stated, 'These are not public documents', revealing the extent to which the exercise has become unaccountable and opaque, and has lost touch with its intended meaning of being responsive to one of India's most vulnerable sections. The annual reports are currently being drafted as per a circular issued in the 1980s. It is time these rules were re-examined, and a more stringent system put in place to enable the annual reports by the Governor to truly reflect the condition of the communities in Schedule V areas. The office should also be equipped to enlist people who can contribute to the independent character of this report, instead of relying only on government departments and reproducing official claims.

To reiterate, the implementation of PESA in the concerned states remains inadequate with the neglect having key dimensions:

1. There is a lack of appreciation about the place of the Fifth Schedule read with PESA in various organs of the state.
2. The formal responsibility of (a) implementation of PESA that stands for total transformation of the paradigm of governance in the Scheduled Areas and (b) dealing with tribal affairs in general is vested with two different ministries in the Union Government, namely, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs respectively. The two are virtually functioning in isolation.
3. There is lack of information and understanding about PESA in general and its radical character in particular amongst the political executive and even concerned administrators.
4. There is virtually no effort to convey and disseminate the message of PESA.

As a senior politician has argued, '... the Act has been passed pursuant to a constitutional imperative, the failure to implement the (PESA) Act in Fifth Schedule areas amounts to non-compliance with constitutional provisions. The union government must take all necessary steps, including resort, if necessary, to litigation, to ensure compliance.'<sup>9</sup> A tribal rights advocate contrarily argued that the delays by the state that keep PESA ineffectual are only to be expected: 'PESA will always entail a struggle for communities because it is a process that shifts power from the state and the elites to them. The process has its own momentum, setbacks, and will take time. But it is a process that is possible.'<sup>10</sup>

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<sup>9</sup> Aiyar, 2002

<sup>10</sup> IRMA conference on PESA, February 2010

But with the rash of changes in the past decade, most tribal communities are no longer socially and economically insulated from their surroundings. So the immense possibilities of PESA would necessarily entail the economic and political elites respecting the law, and honoring their part of this contract. Where they dishonour the law's letter and spirit, the attempt for PESA becomes synonymous with a harsh struggle, as is apparent from the numerous challenges, playing out on the ground today.

### **3. PESA: Challenges on the ground**

There is a veritable crisis in several PESA areas of the country today – a damaging mix of mis-governance, alienation, violent insurgency, and counter-violence by the state as well as non-state actors, such as the Salwa Judum in South Chhattisgarh. In the words of one analyst, 'some tribal communities, such as those in Bastar, are probably witnessing the most severe crisis since their existence' (ibid). While every state has its own specificities, our fieldwork suggests that the challenge has the following broad and inter-linked dimensions across central India. Together, they are rendering PESA weak, or even meaningless, on the ground:

#### **3.1 Conflicts over natural resources**

Official studies have pointed out that the size of the operational holding in the tribal lands is eroding due to the state led acquisition and marketisation process.<sup>11</sup> This is also perhaps due to the fact that the rising poverty levels have directly impacted the tribal community in a way where the landholding pattern is changing for the worse (The 61st Round of the NSSO provides evidence to the deepening levels of poverty.) This process is most pronounced in the states of Orissa, Chhattisgarh and Jharkhand. The report notes elsewhere that the existing framework of law is formidable on paper but is operated to the disadvantage of the tribals.

The sale of tribal lands to non-tribals in the Schedule Five areas is prohibited in all these states. However, transfers continue to take place and have become more perceptible in the post liberalization era. The principal reasons are — transfer through fraudulent means, unrecorded transfers on the basis of oral transactions, transfers by misrepresentation of facts and misstating the purpose, forcible occupation of tribal lands, transfer through illegal marriages, collusive title suites, incorrect recording at the time of the survey, land acquisition process, eviction of encroachments and in the name of exploitation of timber and forest produce and even on the

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<sup>11</sup>Observations at the macro level are based on the report of the 'Committee on State Agrarian Relations and Unfinished Task of Land Reforms. Vol. 1 Draft Report. Ministry of Rural Development, as well as our fieldwork

pretext of development of welfarism.<sup>12</sup> The BN Yugandhar Committee (2002-3) has referred to the process of enclavement, whereby the tribal retreats into the interior areas on the incursion of the non – tribals leaving his home and hearth behind, as a major factor of alienation

PESA provisions are intended to intrinsically protect the resources of the tribal communities, and empower them to act against forcible acquisition. But today, acquisition of the individual's and the community's natural resources for (mostly private) industry in violation of these provisions is the leading flashpoint in several PESA areas. This is creating conflicts, which tribal communities are tragically ill equipped to navigate, even though in several sites, communities are taking on suffering to engage in a difficult movement to resist the loss of their livelihoods and resources, and way of life. Despite their efforts, the current resource clash is shifting an already skewed balance of power from the people to the state and the moneyed. The state is also emerging as a principal violator of the very laws it is meant to uphold – e.g. ignoring a gram sabha's opposition under PESA to land acquisition, and calling village assemblies under heavy police presence to push through land acquisition plans.

The central Land Acquisition Act of 1894 has till date not been amended to bring it in line with the provisions of PESA and to recognize the gram sabha, while a newer bill meant to replace it is yet to be tabled in parliament. At the moment, this colonial-era law is being widely misused on the ground to forcibly acquire individual and community land for private industry. In several cases, the practice of the state government is to sign high profile MOUs with corporate houses (Government of Jharkhand 2008 and IANS, 2010), and then proceed to deploy the Acquisition Act to ostensibly acquire the land for the state industrial corporation. This body then simply leases the land to the private corporation - a complete travesty of the term 'acquisition for a public purpose', as sanctioned by the act.

In some cases, administrations run through the motions of a PESA consultation, but in no instance has the opposition expressed by tribal communities to acquisition of their land resulted in a plan for industry being halted, suggesting the disempowerment of the gram sabha. One official currently engaged in such a process of acquisition said, 'Once I declare anyone's land for acquisition under the (1894) act, it becomes the government's' (Personal interview, July 2009). There is inadequate sensitivity to the fact that tribal communities often cannot take advantage of specialised employment opportunities in the new industry because of their low literacy levels, and face the prospect of being reduced to informal, casual labour. Nor is there a recognition that sometimes communities might simply not want to part with their land, no matter how attractive the compensation, because it will be disruptive of their way of life.

When it comes to acquiring mineral resources for industry, the stakes are similarly loaded against the functioning of the PESA Act. The past decade has witnessed a boom in mining, and

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<sup>12</sup> Many of these reasons are documented by the National Institute of Rural Development in S.K Singh ed, 'Self-Governance for Tribals Vol I, Tribal Lands and Indebtedness, 2005.

the sector is exhorted by the government to grow at an annual rate of 10% a year. Yet, there is still no legal framework in place for communities to dissent to such activity in their area if they so desire, or to secure a direct stake in the earnings, through instruments such as jobs or debentures. Successive governments have systematically ignored the Samata judgment (Supreme Court, 1997), to the severe detriment of tribal communities. The order's highlights are worth reiterating here to indicate how the country could have adopted a model of sustainable mining, which was respectful of the tribal communities living in mineral-rich areas, and thus avoided many of the current conflicts witnessed on the ground today:

1. As per the 73rd Amendment Act, 1992,. 'every Gram Sabha shall be competent to safeguard.....Under clause (m) (ii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a scheduled tribe.'
2. Minerals to be exploited by tribals themselves, either individually or through cooperative societies with the financial assistance of the state.
3. In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as part of the project expenditure: at least 20% of net profits as permanent fund for development needs, apart from reforestation and maintenance of ecology.
4. Transfer of land in Scheduled Areas by way of lease to non-tribals, corporation aggregate, etc stands prohibited to prevent their exploitation in any form.
5. Transfer of mining lease to non-tribals, company, corporation aggregate or partnership firm, etc is unconstitutional, void and inoperative. State instrumentalities like APMDC (Andhra Pradesh Mineral Development Corporation) stand excluded from prohibition.
6. Renewal of lease is a fresh grant of lease and therefore, any such renewal stands prohibited.
7. In States where there are no acts which provide for total prohibition of mining leases of land in Scheduled Areas, Committee of Secretaries and State Cabinet Sub Committees should be constituted and a decision taken.
8. Conference of all Chief Ministers, Ministers holding the Ministry concerned, and Prime Minister and Central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of tribal lands.

The great boom in mining — for example, in the past years, companies paid a royalty to the state of Rs 26 per tonne of iron ore, selling it for over 100 times that, or an average of Rs 3,000— means profits run into crores of rupees. Thus there is a great financial incentive to ignore the PESA law and the Samata judgment, or ensure that they do not get in the way. A former Chief Minister explained the mindful neglect of PESA thus: 'Its implementation would put an end to mining projects'.<sup>13</sup> Communities not only have to bear the brunt of this violent mining/industrialization process, but they also testify that its immense profitability skews the political and administrative agenda in favour of industry, and away from protective laws like PESA.

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<sup>13</sup> Former Chief Minister of Madhya Pradesh.

In Kuchaipada village in Rayagada, Orissa, an area where 3 villagers were killed in a police firing on anti-industry protests, a sarpanch's account was reflective of this widespread sense of helplessness and powerlessness in the face of an invincible clique of interests: 'A lot of money is being spent to build a big police station right opposite the factory (an under-construction aluminum plant), even though none of the villagers asked for it. Instead, we have been giving regular resolutions to the administration for better education and health facilities and for the implementation of NREGA. Not a single public health centre or hospital in our block has a malaria testing kit, even though malaria is so common here. We have to go to private doctors for that. Do our people need better police facilities or better healthcare? What is the administration's priority? This is being done only because the company wants police stations, which can beat us if we ever protest against land acquisition' (Personal interview, December 2009).

Another sarpanch said, 'There is so much money floating around everywhere, which is deciding everything. But who is listening to our troubles? No one honours our decisions under PESA, or do they listen to us because we do not have such money' (Personal interview, July 2009). A senior politician argued, 'In any democratic polity, the recasting of power as signified by PESA should have happened without as much confrontation as we are witnessing today. But the very strong commercial interests seeking out the resources of this area have ensured that PESA is up against a lobby with very deep pockets' (IRMA conference on PESA, February 2010). The ongoing investigations by relevant agencies underway in Orissa and Jharkhand, probing illegal mining, suggest the extent to which tribal communities are being defrauded, and the powerful interests they find themselves up against when they attempt to assert their constitutional rights.

#### **A. LOHANDIGUDA in BASTAR, CHHATTISGARH<sup>14</sup>**

**PESA empowers a community to prevent any land alienation. However, this is in sharp contrast with the Land Acquisition Act (1894), which the centre is yet to amend or replace. This has damaging consequences for the community and for notions of transparent and responsive governance practices, because on the ground, it seems that acquisition becomes subservient to everything else.**

Resident Mahangu Madiya has Rs 55 lakh in his account, but does not even own a mobile phone. He has no use for most such material possessions. Or even this significant sum of money, which he has not touched since it landed in a bank account this January as 'compensation' given by the state, in return for acquiring his 35-acre farm for a proposed steel plant. "I am concerned with farming. My land is important to me. What will I do with this money?" asked the middle-aged farmer

Madiya's Dhuragaon village is among 10 villages along the Indravati River in South Chhattisgarh Bastar district, whose 12,000-strong population the government is currently

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<sup>14</sup> The case studies narrated here are based on fieldwork carried out by the authors for this study

attempting to displace, aided by a colonial-era land acquisition law. They plan to hand over these fertile farms to Tata Steel Limited for a steel plant.

Most villagers here are from the Madiya tribe. The community of industrious and thrifty rice and corn cultivators worships its ancestors, prays to nature in elaborate festivals for good harvests, and believes local goddesses mark the village boundaries. Their children are the first generation to be formally schooled, and the community profoundly resents being pushed by the state into an economy that seems to have little relevance to their worldview or economic and social systems.

Villagers claim they were never told that their land is marked for giving over to industry, but read about it in the newspapers. Then the government pushed through the acquisition procedures deploying deceit and force. It called gram sabhas in July and August 2006, with heavy police presence blocking roads to and from the villages. “We were required to sign a register at the entrance before going into the meetings. There, government officials told us that a steel plant was in our best interests. The next thing we knew, local newspapers were carrying statements from the administration saying our villages have agreed to give up their land”, said Madiya. “Is the government meant to work for the people, or for the powerful?”

In the largest village of Thokraguda, people are still holding out bravely, led by their sarpanch Hidmo Ram Mandavi. The bespectacled man with a primary school education said in a straightforward manner, “We might not have wealth (*sampatti*) but we have peace (*shanti*). By taking our land, the company will reduce us to coolies or *chaprasis*. We are owners of land now; we will be reduced to servants of the factory if we agree to the government’s plan. Why should we be forced to agree to this?”

Mandavi has called several gram sabhas in his village, and even traveled to Delhi to protest over the forcible land acquisition. The sarpanch said, “Everything is happening in complete violation of the PESA Act, and the powers given to gram sabhas.” Madiya and Mandavi are among several villagers here who found criminal cases lodged against them in the following months, arrested from public rallies to protest the taking over of their land. Many like them are out on bail currently, but must still put in monthly appearances in court.

There was a great deal of hesitancy on part of the officials to share information with the research team. In a follow-up meeting three months later in October, the District Collector informed the researchers that the information sought was still being gathered. Meanwhile the district administration held a public hearing for the environmental clearance for the steel plant. This meeting as is typical was not held in the villages but in the office of the Collectorate, over 20 kilometers away from the affected villages.

## **B. NARAYNAPATNA in KORAPUT, ORISSA**

**PESA empowers the gram sabha to prevent the alienation of tribal land by non-tribals. The Orissa Scheduled Areas Transfer of Immovable Property Act reinforces this principle. But these laws are non-functional on the ground, as acknowledged in a 2002 amendment. In Narayanpatna, a successful grassroots movement for land reclamation has resulted in polarization on the ground, widespread arrests, and deployment of security forces, leading up to the death of two tribal men during a police firing on a protest march in November 2009.**

Over the past five years, the Narayanpatna and Bandhugaon blocks of Koraput district in Western Orissa have been the site of a tribal movement of agricultural labourers called the Chasi Mulia Adivasi Sangh (CMAS). Over the last three years, the movement has gained strength and spread to the neighbouring blocks of Laxmipur and Similiguda. It has built on alienation, which has a three-decade-long history, when these communities lost their lands to hydropower projects and industries, and had to endure displacement. The situation worsened over the years as moneylenders and traders forced the tribals into debt traps, took advantage of their inability to read or write or access land revenue records, and took over many of their land holdings.

In June 2009, the agitation under the banner of the CMAS gained momentum as it took back and ploughed more than 2000 acres of reclaimed land, and declared that it would release Mali Parbat (a mountain range, with rich mineral deposits) from the bauxite mining companies. The other main site of action was ending liquor trade in the area, pointing to the deep links between alcoholism, tribal exploitation, land alienation and debt. Remarkably, they managed to get all the liquor shops boycotted in the blocks, leading to a fall in business for the liquor and moneylender lobbies.

In October 2009 the CMAS grew more assertive and carried out a rally and demonstration in Bhubaneswar and declared that their movement would continue their struggle to get land back to the tribals, and expand to other areas of the state. Their slogan was, 'The land, the water, the forests, the wind...everything is ours.'

The struggle started getting violent overtones, as a counter organisation of urban elites called the *Shanti Committee* (akin to the Salwa Judum in Bastar) came into existence. Violence and counter violence created a tense and complex situation. In August 2009 the Collector attempted dialogue with the agitating tribals, asking them to not break the law, and assuring that their land grievances would be settled under revenue laws and due procedures. The dialogue continued, and no forcible occupation of land was taken up subsequently according to government accounts.

Criminal cases were lodged against different leaders of the CMAS, and combing operations began, and the CMAS held protest rallies against alleged police atrocities. The action by the security forces only appears to have increased, as the harvesting time drew near. Reportedly they have ostensibly sought to prevent harvest of crops on lands forcibly occupied by the CMAS. Local accounts indicate that the tensions were further aggravated on the 18<sup>th</sup> and 19<sup>th</sup> of November as people were warned by the security forces in several villages that they should leave their homes immediately, to avoid dire consequences. There has been an increasing presence of the security forces in the areas now.

On 20<sup>th</sup> November, CMAS members went to the Narayanpatna Police Station again to protest against the combing operations and the high-handedness of security forces in the villages. During the protests, the police opened fire on the crowd, and killed CMAS members Kendruka Singanna and Nachika Andru, and injured several people. Police claim the firings were necessary for self-defence. On the other hand, independent observers term it a needless and pre-planned killing, pointing in particular to evidence such as bullet wounds at the back, shot from close range.

Since these deaths, there has been little effort on the part of the government to inquire into the matter, to initiate a peace-building process, or to bring about justice to the aggrieved. The

polarization and conflict levels have increased manifold following the firing incident. A visit by IRMA's researcher with another local fact-finding team took place some days later in December, amidst intense hostility and police scrutiny, which limited the scope of the findings.

In Baliaput village, belonging to some of the CMAS' noted leaders, including Nachika Linga, most of the 70-odd houses were empty. The village wore a ghost appearance, with ill-nourished children milling around. Few villagers who remained said villagers preferred to hide in the forests because of the police and paramilitary forces that come in big numbers and with arms. Linga's house was empty, save his aged mother in tattered clothes. A testimony by relative NS (name withheld to protect identity) summed up how the current conflict was rooted in a legacy of tribal exploitation and misgovernance. The young man in his twenties, said he had first been arrested in 2001, when he tried to cultivate a piece of land, which a local moneylender ("with 14 acres of land, and two guns"), has wrested from his father. He said, "The police did not listen to our complaint of how our land has been seized. Instead they backed moneylenders, put us in jail and threatened us to not create trouble. Nobody was interested in our problems till the CMAS was formed."

When asked how the earlier peace could be restored, NS said, "The truth is things were not good earlier for us. If they were, why would we need to start the CMAS? There was no peace. We used to be exploited a lot. The police would only listen to the complaints of those who have money. We toil night and day, and have been toiling since our father's time, and our grandfather's time. Yet, why don't we have a piece of land to call our own? Why do we have to go hungry despite working so hard? Why did my father die after drinking alcohol? That is how the CMAS began - to oppose the liquor business and indebtedness, to restore lands to the cultivator, and to resist police harassment. We prefer to die rather than give up our lands or our organisation." Men in the village spoke articulately and calmly about their rights and their actions, and denied having or wanting links with the Maoists. They said, "We have no arms. We only have our agricultural implements. The police is trying to end the CMAS. If the organization ends, alcohol will return to the area. The police will again become oppressive. We will again be exploited."

At Narayanpatna, an administrative perspective was sought from the Block Development Officer. The officer was reticent, but said he was trying to undertake development works in the area, and restore normalcy. He said that he had been the only officer who had stayed on after the conflict, and made efforts to win the confidence of the villagers. En route, we were questioned by armed forces in fatigues, who dominate the town's spinal street, thus monitoring any movement into the area, and its villages further. A school close by is now home to over a hundred paramilitary forces. A senior security official said 73 villagers have been arrested since the Nov 20 firing on various charges, including old and new cases. Some are minors, but only because they are also involved in the activities, they also carry bows and arrows." He said it was not possible to end combing operations or file charge sheets against the arrested villagers in the slated 120 days. He added that an additional company of CRPF troops had been sent to the area in the wake of the November 20 firing. He however admitted that police control would not be able to end the conflict. He said it was important to address the root cause of the problem, namely violation of land rights.

### 3.2 Poor recognition of Forest Rights

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was a result of the polity responding to protracted struggles by tribal communities and movements to assert rights over the forestlands they were traditionally dependent on. The Act turned colonial forest policy on its head, which had established the rights of the state over the forests over the traditional rights of the community. Further, by recognizing the validity of the gram sabha to give effect to these rights, this Act has great synergy with PESA's provisions. However continuing bureaucratic control, resistant attitudes of the forest department officials to give ownership to communities, and inadequate efforts at awareness have led to the slow implementation of the Act. The law lays down a clear three-stage process for recognition of people's rights. It also defines what constitutes admissible evidence. The Forest Department has a role at the district and sub-divisional levels, but only as one of the parties involved. But the department has made every effort to give itself illegal veto powers to deny rights. In most states the department is refusing to be present at the time of verification by the Forest Rights Committee, and then demanding that the claim be rejected at the screening stage as they did not attend.<sup>15</sup>

#### **Titles distributed over claims received under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest rights) Act, 2006**

State	Total number of claims received up to 31.01.10	Total number of titles deeds distributed/ready up to 31.01.10	Percentage of titles distributed over number of claims received
Andhra Pradesh	3,25,818	1,73,334 distributed	53.20%
Chhattisgarh	4,86,101	2,14,633 distributed	44.15%
Orissa	3,29,514	97,595 distributed	29.62%
Rajasthan	59,900	14,171 distributed	23.66%

<sup>15</sup> Interviews with community and people June 2009.

Madhya Pradesh	3,84,466	72,485 distributed	18.85%
West Bengal	1,41,783	17,360 distributed	12.24%
Jharkhand	25,220	2,505 distributed	9.93%
Gujarat	1,86,334	11,382 distributed	6.11%
Maharashtra	3,03,960	2453	0.81%

Source: Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for the period ending 31st January 2010. Ministry of Tribal Affairs

The Forest Rights Act requires that all rights be recognised through a transparent, public process, where the gram sabha or village assembly is central. Instead of following that process, government officers are imposing their own diktats. Gram sabhas are being deliberately called at the panchayat level or even larger units in Andhra Pradesh, Chhattisgarh and elsewhere – where they are too large for adivasis and forest dwellers to have their voices heard. This is in direct violation of the Act, especially in Schedule Five areas. Even where gram sabhas have functioned and recommended claims, in Madhya Pradesh, Gujarat, Andhra Pradesh and other States, the area over which rights are being recognised is being arbitrarily reduced. People cultivating an acre of land file claims for it, have their claims duly verified, and find that the actual title is given for a tenth of the area. It is not just the process of implementation but the quality of the same that is important here, and thus the states need to make this process of implementation meaningful for the communities dwelling in the forests.

### **C. DOKRANALA in KANKER, CHHATTISGARH**

**PESA recognizes a gram sabha, as pre-eminent, as opposed to a gram panchayat, and empowers a community to take its own decisions regarding its livelihoods and forest produce. The Forest Rights Act was meant to empower a community to stake claims to land titles. But securing these rights is a process of continuous struggle, and government and panchayat functionaries are unaware of the law.**

In Naharpur block, Dokranala village is a collection of kucha homes in a clearing in the deep forest, accessible only by foot. The 40-odd families here belong to the nomadic Pardhi tribe, which has traditionally been sustained by nature for food and livelihood. They are skilful hunters and bamboo weavers. But today, they find it hard to survive as the forests and wildlife deplete, and government officials hold their Activity illegal. The homes here have been burnt many times by forest guards and police, including as recently as 15<sup>th</sup> October 2008. The effects

of such brutal state Actions can be debilitating for the community, and result in extreme conditions of hunger. For example, “We had got a very good rice crop in the fields, but they burnt down that too...” said several women.

The families here are skilled bamboo weavers, making baskets and similar products, which they then sell in the weekly market. But the terms on which they do this are extremely precarious and harsh. They purchase bamboo as raw material for Rs 40-50 per piece in the open market, spend the week making the products and sell them in the market. If they cannot sell their goods, they engage in distress sales to a merchant who buys it from them at a lower price. “We need the money in order to buy foodgrain”, said Birju Ram Pardhi, the local head. All the families survive like this – from one week to the next, and PDS benefits also do not extend to them because of little recognition given their nomadic nature.

“Under a government scheme, these communities are meant to get 1500 bamboos every year”, said an employee of a local non-governmental group, working in the area since two decades. “But it is barely implemented.” Ironically, there are huge stacks of bamboos outside the forest department offices, which are usually sold commercially to bigger customers. The families still survive on a host of roots and forest produce. Some of the men bring out handmade catapults and arrows of wood, iron and deerskin, which are used less and less now. Pardhi said, “First families were less, and the forests were rich. Now the reverse is true, and it is hard for us to survive.”

The pressure on their livelihoods makes it necessary for them to settle down as cultivators, the community said. But they have not managed to secure any rights yet under the Forest Rights Act. Their applications to the local gram panchayat have not yielded concrete gains. Pardhi, said, “They want to keep us poor. They want that we be labourers on their farms, but never have any farmlands of our own”

The sarpanch, and gram sevak who is appointed by the government to the gram sabha, said the bureaucracy had not Acted on those requests yet. “We have deposited the 70 claims in the block office, but we do not know what has happened after that”, said the sarpanch Rajula Dhurug, prompted with answers by the gram sevak. When asked why the community could not make the claims directly to the officials, she said, “I have undergone training on the Forest Rights Act in 2008 but I do not know much.” The panchayat post is reserved for women, and while Dhurug has won the seat, most of the work is actually still in the control of the gram sevak. On this day, a village meeting was called at noon to assess the NREGA work done in the previous months, and to plan for new works. But till 2, there were no signs of any villager coming for the meeting. Dhurug said, “We were told only last evening that we must hold it. So people might not know.”

Alternatively, the benefits of the implementation of the Forest Rights Act and the sense of security that came with it are evident in Ghotiya village in the adjoining Kanker block, where the community of Pardhis have managed to successfully agitate and secure ownership rights to land they cultivated. The village had been part of the local struggle for land rights even before the Act was passed, holding continuous *padyatras* to the collectorate from 2003. Tetku Ram Netam, who was among 2 villagers who travelled with the Ekta Parishad rally (a nation-wide

rally on the issue of forest rights) to Delhi in 2007 said, “We would be harassed by the forest department, our homes would be broken and our belongings burnt down. After FRA was passed, it took another year of agitation before the administration gave us *pattas*. The land is ours, and we feel good to work hard tilling it and improving it. We had *kucha* houses before, but we have invested money and built *pucca* houses now because we feel more secure.”

### 3.3 Shrinking space to resolve people’s issues under PESA

A raft of peoples movements are currently underway on the ground, either to assert legitimate rights, or to resist their violation – e.g. for land reclamation and forest rights, or against the takeover of resources, corruption, or displacement. In one way, these could be seen as the community’s efforts for self-determination and self-governance. These efforts are emblematic of the principles of direct and participatory democracy as was envisioned in the 73<sup>rd</sup> amendment, and then taken forward by PESA, by recognizing gram sabhas to be constitutionally valid bodies of local self-government. However, in most cases, and particularly against the backdrop of the state’s efforts against left-wing extremism, they are being dubbed as Maoist.

‘We protest about anything – the corruption in NREGA, the takeover of our land”, and we are immediately dubbed Maoist’, said a sarpanch in a village in Koraput in Western Orissa. ‘Basically, if we raise our voice against something the government is doing, no matter how illegal or unfair we feel it might be to us, we become Naxals and Maoists.’<sup>16</sup>

Another health worker said, ‘I would work among the Bonda tribe in Malkangiri, and visit villages, where no government doctor, nurse or government official would ever care to go. One day, I got a letter from the Collector saying I am working in villages that the police said are in the Maoist zone, and so I must be a Maoist, and I should leave the district. The administration was not interested in health services to the community, but was primarily concerned about security. In a meeting called by (Chief Minister) Naveen Patnaik to discuss the Maoist problem, many of us advised him, the amount of funds you are spending on weapons and security personnel, spend a quarter of that instead on raising a force that has the power to detect and bring out corruption in government programs. That will automatically end the alienation that Maoists are using. But the suggestion was never taken seriously’<sup>17</sup>

The head of a three-decade-old organisation in Kanker reflected how laws like the Chhattisgarh Public Security Act (ostensibly enacted to counter extremist activity) affected their advocacy activities, or stifled any popular protest attempting to assert rights guaranteed by PESA and FRA: ‘Today, if we have to hold a rally drawing attention to the non-implementation of FRA in

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<sup>16</sup> Personal interview, December 2009

<sup>17</sup> Personal interview, December 2009

the district, we have to first get the police's permission. If we have to take a dharna to the Collector's office about corruption by functionaries in some rural programs, we have to tell the police...everything needs the government's prior permission now, and that is not easy to come by under this new law'<sup>18</sup>

In 3 villages in Dantewada, a civil rights worker was aiding communities file their claims under the Forest Rights Act, after a local revenue official had demanded bribes from the villagers to survey their plots and process their claims. The worker said, 'We want villages to be aware of their rights and protest peacefully if their rights are violated, not become extreme or adopt violence. But the government treats anyone who protests like an insurgent, and this only pushes people towards extremism.'<sup>19</sup> This worker has since been beaten up on two occasions by the police and is currently in jail, without any charges being framed against him.

Such criminalizing of the assertion of one's constitutional rights as a citizen is a short-sighted approach towards dealing with discontent, besides being a violation of landmark laws like PESA and FRA, and is having the effect of pushing people towards extremism. Essentially, the district administration's approach is geared towards forcefully maintaining the veneer of law and order. But this ignores the root causes of alienation, which continue to seethe beneath. This might help us partly understand why the Naxal movement still continues four decades after it began, when police brutality towards adivasis provided the first spark.

There are also inadequate attempts for democratic dialogue to resolve conflicts, with the government acting as an honest broker to build mutual understanding, say between an industry and the community, or between elites and the adivasi labourers. One tribal rights advocate asked, 'The government might not be interested in talking to the Maoists without certain pre-conditions. But what stops it from talking to its own people and understanding their pain?'<sup>20</sup> Nor is there adequate acknowledgement that across PESA areas, people increasingly want the democratic spaces that allow them a life of dignity. To that extent, the current alienation is a manifestation of misgovernance, and a lasting solution to it would also lie in an honest implementation of PESA, and putting people's aspirations at the centre of public policies in Schedule Five areas.

#### **D. MANDIBISI in RAYAGADA, ORISSA**

**PESA confers power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant. However excise officials are reluctant to cede authority to an assertive village community. The administration backs country liquor shops, which have the requisite money power and a vested interest in alcoholism since it engenders debt and the community's dependence on the moneylender.**

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<sup>18</sup> Personal interview, July 2009

<sup>19</sup> Personal interview, July 2009

<sup>20</sup> IRMA conference on PESA, February 2010

In Mandibisi village in Rayagada district, villagers led by women have been at the forefront of an effort to establish control over the sale of liquor in their village by a country liquor shop. While PESA guarantees the gram sabha the right to determine such trade, the community has to work a lot to secure this right in practice.

The Orissa government's policy provides for licenses to country liquor shops in every village, and also sometimes leases land for the shop to them on government owned land. On the ground, the people's experience has been that the administration supports liquor trade because of excise earnings, and because local elite interests have deep links with alcoholism, family debt and money lending.

In Mandibisi, the country liquor shop was established 7 years ago, with the brewer and seller from the neighboring state of Bihar, who set up residence in the village, when he came to start the liquor trade. Over the years, alcoholism grew and men began borrowing money in order to finance their drinking needs, with women facing the adverse consequences.

According to one woman in the village, "As drinking increased, our debts grew and men would not even do their work, and so our work on the farms also increased. They would even beat us up when drunk. Further, the breweries would buy the mahua flower (an ingredient in the liquor) from families at Rs 7 per kilogram, which is half the government mandated rate of Rs 15 per kg." But we began getting most worried when young boys also began taking to buying alcohol from the shop when returning from school. That is when we decided to act." They picketed in front of the liquor shop, and asked it to close down, but the shop owner said he was paying Rs 3000 in excise earnings to the administration every month and he would not move from that village.

The gram Sabha then passed a resolution that the village will not allow the sale of liquor in the village. The women went in a group to the Collector, and met local officials, who tried to explain to them that the liquor was good as opposed to liquor that is brewed at home. "We did not agree and we met the Collector, Krishnachandra Mahapatra, who assured us that the shop will be shut in a month when its lease ends. But nothing happened", said Sushma Majhi, secretary of a women's collective in the village called Our Collective (*Aama Sangathana*).

When the liquor shop was still not shut down, the villagers passed another resolution, and decided to demonstrate again in front of the Collectorate's office in Rayagada, over 80 km away. Such protests had to be organized eight times in the course of the struggle to get the shop closed. Even arranging such protests entail much hardship for the individual women and the village as a whole. One lady said, "We collected money, hired a truck for Rs 2000, took puffed rice in a sack as ration and went to the Collectorate. We would eat very little, so that the ration lasts for all of us". The women finally broke a part of the shop. In response the police came to arrest them, and they fled into the forests surrounding the village. According to Fulsing Naik, a young, involved and educated villager, who helped mobilize people and arrange meetings, the protests against the liquor shop led to his arrest by the police. "They put me in prison. When I told the inspector that the PESA law allows us to decide our policy on liquor trade, he shot back, "Are you trying to teach me the law? If you are so knowledgeable about the law, why are you living here in the village and the forest? Go and speak in the Orissa assembly!"

Naik was also offered a bribe by the liquor mafia to stop the villagers from protesting against the shop, but he resisted taking it. He was released after villagers went in a group and demonstrated in front of the Collectorate and a local civil society group drew attention to his

arrest. The villagers refused to stop their dharna till they had received an assurance in writing from the Collectorate that the shop would be closed down. The shop was finally closed this July, after almost two years of struggle, though the shop still continues to stand at the same location, and the liquor seller still lives in the village. At the time of writing this, villagers however had just received another letter from the district administration saying that if it does not receive any opposition to the proposal for a liquor shop in the village within 30 working days, its functioning will be cleared. So Mandibisi's struggle for a basic right guaranteed by PESA is still not over. In the words of the villagers, "Can such actions of the administration only be countered by violent and aggressive Maoists *dalams*, or will we, who wish to secure our constitutional rights in a peaceful manner, be allowed the space to function?"

### 3.4 Left-wing extremism and militarisation in PESA areas

Of the 76 left-wing extremist-affected districts in the country today, 32 are PESA districts, according to official estimates. Drawing on a four-decade-old movement of militant left politics, the CPI (Maoist) was formed in September 2004, by merging the Communist Party of India (Marxist Leninist) and the Maoist Communist Centre. Its spread currently extends across significant parts of Bihar, Jharkhand, Orissa, Chhattisgarh and Andhra Pradesh, leading to the term, 'The Red Corridor'. However, some analysts pertinently argue that the analogy of 'The Speckled Band' more aptly describes the Maoists' area of influence, given they have control over some selected forested pockets in the districts stretching across the heart of central India. This includes the epicenter of the banned party's base in the Dandakaranya region, a vast forested area on the borders of Andhra Pradesh, Chhattisgarh, and Orissa. While the senior leadership of the party is mostly drawn from non-tribal communities, much of the rank and file comes from local villages, and has built on their grievances emanating from the non-implementation of PESA. In the words of a former party member, 'In several villages of Chhattisgarh and Jharkhand, where the party's grassroots network is strong, households have one or more members as a cadre.'<sup>21</sup>

Some analysts read the resurgence and spread of left-wing extremism as a phenomenon of tribal self-assertion. They point to the co-incidence in the rise of economic reforms and the deepening of the Maoist movement in India's polity, the latter being a retort to the exclusionary nature of these policies. According to one senior politician, 'If the state is neglectful and oppressive, as it has been, it provides the water in which the guerilla fish swim.'<sup>22</sup> Another senior politician seconded, 'PESA has not yet been honestly implemented in a single district yet. If it is, we will solve the Naxal problem.'<sup>23</sup>

Some the people's struggles nurtured by the Maoist party speak directly to the problems of tribal communities on the ground, which have intensified because of the systemic neglect of PESA. These include issues of access to lands and forests, fair wages, the distress of farmers and

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<sup>21</sup> IRMA fieldwork, December 2009.

<sup>22</sup> IRMA conference on PESA, February 2010

<sup>23</sup> Digvijaya Singh, 2009

weavers, awareness of basic rights, as guaranteed by the Constitution. The Maoists further argue that in the light of the state's insensitivity towards the problems of the weaker sections, only their party's ideology and methods can resolve the exploitation faced by the tribals. Government analyses<sup>24</sup> second the development deficit roots in the left-wing extremism- affected districts:

- i) More than 3/4th of the people living in these districts have a low standard of living index.  
(The low standard of living index was a composite index worked out as a part of District Level Household Survey Phase-III)
- ii) Female literacy for most districts is below the national average
- iii) Less than 1/4th of the population lives in pucca houses
- iv) Less than 1/3rd have an electricity connection

But while party proclamations and the evidence of poor development and governance support this hypothesis—of economic liberalization fuelling socio-economic disparities, resulting in political extremism—it is necessary to note that the Maoist party, like all political outfits, seeks political power. As one functionary said, 'We do not want to add windows to the existing house (India's parliamentary democracy) to improve it. We want to bring down the house, and build a new one.'<sup>25</sup>

The party thus has its own sharply defined goals, culminating in the overthrow of the Indian state. So for example, while denouncing 'the loot of adivasi resources', as and when necessary to further its political and military aims, the party takes money from the mining industry to fund its party operations. One civil rights worker in the PESA area of Khammam, Andhra Pradesh reflected on this altering nature: 'When the Naxals first came here a decade ago, their work was much needed— they agitated for better rates for tendu leaves sold by the adivasis, and for minimum wages. No government was interested in ending this exploitation of the adivasis. But today, the party has become corrupt, power hungry and intolerant of any difference.'<sup>26</sup> Another advocate said, 'We also fight for the same issues as them – namely the dignity of the tribal, and the upholding of the Constitution by the powerful. But we adopt non-violent methods, and so we seem like a threat to the Maoists.'<sup>27</sup>

So the Maoists today have a dual effect on the ground in PESA areas. By virtue of the gun they wield, they are able to evoke some fear in the administration at the village/block/district level. They consequently prevent the common villager's powerlessness over the neglect or violation of protective laws like PESA e.g. warning a *talathi*, who might be demanding bribes in return for fulfilling the duty mandated to him under the Forest Rights Act, a trader who might be paying an exploitative rate for forest produce, or a contractor who is violating the minimum wage. The party has also done an immense amount of rural development work, such as mobilizing community labour for farm ponds, rainwater harvesting and land conservation works in the

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<sup>24</sup> Ministry of Health and Family Welfare, 2009 & Ministry of Panchayati Raj, 2009

<sup>25</sup> IRMA fieldwork, February 2010

<sup>26</sup> IRMA fieldwork, July 2009

<sup>27</sup> IRMA fieldwork, July 2009

Dandakaranya region, which villagers testified, had improved their crops and improved their food security situation.<sup>28</sup>

On the other hand, the party ideology is brutal and cynical. It attacks perceived class opponents, and even carries out political assassinations, e.g. panchayat members from rival political parties, who might have proximity to the administration, and are seen as exploiters of the people, or a political threat. Further, the party's violence is now resulting in an armed response from the state with the nebulous aim of ending Maoist influence on the ground, and extending the state's control villages in their control. As a result of this, there is increasingly no middle ground in PESA areas, and communities here face violence and displacement.

Further, the conditions of civil war and the extra-constitutional Salwa Judum's scorched earth policy have also induced displacement, which current policies are not adequately responsive to. For example, this has affected over 600 villages in South Chhattisgarh, whose residents have been forced to flee to villages in Andhra Pradesh and Orissa, and eking a living on the margins of existence. Though the areas they have fled to—e.g. Khammam in Andhra Pradesh or Malkangiri in Orissa—are also Schedule Five areas, these displaced communities are treated as non-citizens at best, or Maoist supporters at worst. No entitlements (for example under the Public Distribution System or the National Rural Employment Guarantee Act) are being extended to them, with the justification that they do not originally belong to that state. One former panchayat member whose village was burnt down in the reprisals, and who has been leading a displaced life since the past five years said, "The Salwa Judum burnt our village and said it will finish the Naxals in 3 months. But the Naxals are there. The security forces are there. Our lives have been crushed."<sup>29</sup>

What is the effect of all this on PESA's implementation? Such conditions of tumult have disrupted normal life, rendering PESA meaningless on the ground. While security personnel do not have a direct role in the implementation of PESA, the effect of the current militarisation means they must concentrate power in their hands in order to win the armed conflict. How do personnel on the ground go about the difficult and dangerous task of ascertaining who is a Maoist/Naxal and who is not? What is punishable, and how does the state establish criminality? There are no straight answers to these questions, and the socio-cultural gap between officials in positions of authority, and tribal communities on the ground only widens the rift. Fear and distrust of the state is disturbingly high among tribal communities, and this anger is currently going unacknowledged and unaddressed. PESA did not envisage this extreme scenario, and so its provisions are not geared to address such challenges. Therefore it is necessary for policymakers to ask if and how the state's security aims can be reconciled on the ground with respect towards a law like PESA, which emphasizes devolution of power to people.

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<sup>28</sup> IRMA fieldwork, July 2009

<sup>29</sup> Personal interview, July 2009

### 3.5 Agrarian Crisis and Distress Migration

The severe crisis in rain-fed agriculture, widespread leakages in social security nets like NREGA, and high levels of distress migration mean that some of the most vulnerable sections of a village community are away from their homes for 5-6 months of the year in a desperate search for work. This is particularly true of tribal communities in Madhya Pradesh, Chhattisgarh, Orissa, and Jharkhand. The migration renders impossible participation in village decision-making, and is to the severe detriment of the inclusive and participatory governance envisioned by laws like PESA.

An added damage suffered by PESA as an effect of this is that as migrant workers, tribal communities can assert few rights and often have to resign themselves to working in exploitative conditions of work for a below-minimum wage, for lack of better choices. For example, all through January-February, migrant workers from Chhattisgarh were engaged in an agitation for better wages for working on the brick kilns on the outskirts of Ahemdabad. In the state legislative assembly, the Chhattisgarh state government's Minister of Labour provided a telling statistic: 600 workers, as per government records, were bonded labourers in other states. The Inter-State Migrant Worker's Act, legislated by Parliament in the 1970s in a bid to end the "various abuses" of migrants from the tribal communities of western Orissa, could provide a modicum of social security. But a labour advocate said: 'The law is roundly flouted because few workers can read or write and are too vulnerable economically to demand for its provisions, while officials entrusted with monitoring the Act are hand-in-glove with the contractors.' Spending half of the year in such abusive conditions adversely affects the individual and the community's social confidence and self-assertion - qualities that are critical to the competencies that the PESA law takes for granted.

#### F. ALIRAJPUR and JHABUA in MADHYA PRADESH

**PESA is silent on a critical aspect of the tribal community's life i.e. their exploitation as labour. Working in very harsh conditions, communities have no power to determine fair wages, or legal working conditions, or assert themselves. Despite over 300 deaths and scores of incurable illnesses of migrants in this tribal belt, and a petition with the National Human Rights Commission underway since over three years, there has been no relief or compensation, or addressing of the root causes of the silicosis problem.**

"He kept coughing...became more and more weak...so thin that his bones started to show. I took him to the district hospital, to Jhabua, and then to Indore, wherever I could...sold my farm and spent Rs 60,000. But every doctor said *Bimaari pakad mein nahi aati* (We cannot treat the illness). No treatment worked." On a chilly November morning weeks ago, Kan Singh cremated his nephew, Phul Singh, who was in his early twenties. Villagers in Undali in Madhya Pradesh, 400 kilometers south of the state capital of Bhopal, watched the orange flames reduce Phul's corpse to ashes. But for his lungs. "They remained behind and when we tore them open, there

were fistfuls of white dust inside,” recounted Kan Singh on a recent evening, as darkness descended on this village that is without electricity.

In the days following Phul’s demise, this community of 700-odd families of the Bhil tribe saw two more of its youth—Mohan Budda and Mahesh Mori—die. Their illnesses were similar. As were the signs following the deaths. “We put more logs on the pyre, but still his lungs did not decompose. We wondered why. Inside, we found the same dust,” said Mahesh’s hapless father Amar, clutching a photograph of his dead son and a fraying x-ray of the debilitated youth’s lungs.

A fatal and incurable workplace disease called silicosis, picked up in the course of backbreaking labour in the stone-crushing factories of Gujarat has, according to partial government estimates, already taken the lives of over 300 Bhil villagers in arid southern Madhya Pradesh. Many more are headed towards death, similarly ill from inhaling the deadly quartz dust while working in the factories on below minimum-wage work as distress migrants.

The tragedy is largely caused by the apathy of multiple authorities. For example, more than a month since the cremations in Undali, the local public health system had not even registered the deaths, or bothered to probe what caused three young men to die in such quick succession. Across the three districts of the region (Jhabua, Alirajpur and Dhar), there is still no systematic and in-depth medical testing by the state to ascertain how many villagers are dead and how many have the fatal illness.

In the capital of Delhi, a file on the silicosis deaths accumulates papers in the apex watchdog body, the National Human Rights Commission (NHRC). In 2006, faced with inaction by local authorities in spite of the mounting deaths of villagers, a tribal workers’ rights body from south Madhya Pradesh, the *Khedoot Mazdoor Chetna Sangathan*, had first moved the NHRC, documenting over 500 cases of past and impending deaths.

Its representative said, “We urged NHRC to issue three directives to local authorities. First, conduct a comprehensive check-up to arrive at an accurate figure of the affected and the dying because doctors here only diagnose tuberculosis, not silicosis, for which there are anti-pollution laws meant to prevent its contraction at the workplace. Second, draw up a relief and compensation package because medical expenses are crushing the bereaved and the ill. Finally, prosecute the factories and ensure they do not hire any more unsuspecting tribals to undertake this fatal work.” He added, “Three years have gone by. We are still engaged in the same pleas.”

On the ground, all-round neglect ensures that laws notwithstanding, the Bhils of this region continue to be condemned to premature and painful deaths: industrial safety standards and labour laws that authorities neither monitor nor enforce, an unresponsive public health system that does not diagnose a fatal and now widespread workplace illness, and a social security net that does not deliver. This, despite successive droughts in this zone of single-crop farms, which are pushing families out of their homes and into exploitative labour for half of the year. The district has received funds under the Backward Region Grant Fund (BRGF) but most of these have been used to undertake civil works including government offices and houses for BPL families, rather than investments in small-scale local livelihood opportunities, or in skill development programs.

As the above analysis suggests, PESA areas are witnessing a coalescing of livelihood crises, the absence of fundamental entitlements guaranteed under the Constitution, mis-governance, alienation, violent insurgency and a breakdown of the rule of law. There is a steady militarisation currently underway on the ground. But the benefits of such an approach to solve the complex challenges facing these areas are far from straightforward. In a recent speech to the meeting of Chief Ministers from the affected states, Prime Minister Manmohan Singh (2010) struck such a cautionary note, while also emphasizing the need for better governance in these areas: ‘...our response to Left–Wing extremism must be calibrated to avoid alienating our people, especially those in the tribal areas. It must also go hand in hand with social and economic development of areas affected by Left–Wing extremism, bringing them into the mainstream of national progress. Tribal communities in particular, should get full benefit of our development schemes and development programmes. This is only possible by improving service delivery in tribal dominated areas.’ However, our attempts for better governance and improved delivery of public services will be inadequate, if they do not acknowledge the centrality of PESA.

#### **4 Restoring and Actualising PESA: The Agenda of Democracy**

PESA is an integral part of the Constitution. Four recent exercises<sup>30</sup> have compellingly outlined a complex of issues in Schedule Five areas, which need to be addressed by implementing PESA with political will, urgency, and creativity. In the light of our fieldwork, and the issues witnessed on the ground, this analysis would like to reiterate some of them, as well as suggest some measures as expressed by communities, and by community workers grappling on a daily basis with the challenge of implementing PESA. In order to streamline the responses on the issues raised in the discussion with relation to the concerns of non implementation of PESA, we have first outlined the necessary enabling conditions that would go a long way in creating an atmosphere that we think is critical for the restoration of PESA. We have also subsequently outlined concrete actionable points to activate PESA.

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<sup>30</sup> ‘The B.D.Sharma Committee Report on Guidelines to Vest Gram Sabhas with Powers’, ‘Development Challenges in Extremist-Affected Areas’, 7<sup>th</sup> Report of the Second Administrative Reforms Commission – ‘Capacity Building for Conflict Resolution: Friction to Fusion’, the report of the ‘Committee on State Agrarian Relations and Unfinished Task of Land Reforms’

## **Enabling Conditions**

**i.** Displacement, as well as loss of access to forest and water resources because of mining and industry, are urgent threats not just to local livelihoods, but also to notions of democratic and fair governance in PESA areas. The Land Acquisition Bill is currently waiting to be introduced in Parliament. There were demands by people's organisations that the discussion on it be accompanied by a white paper on displacement, in particular in Schedule Five areas. Other views from the ground even suggested that a moratorium on acquisition and involuntary displacement in PESA areas be declared, till there is an analysis of the costs and benefits that have accrued to tribal communities through the process of industrialization.

Till such exercises happen, the efforts should be to make the processes of change participatory, rather than violative. The Memorandum of Understandings signed by the state governments with industrial houses, including mining companies should be re-examined in a public exercise, with gram sabhas at the centre of this enquiry.

**ii.** The Environmental Impact Assessment (EIA) stage of a proposed industrial or mining project is critical in the fate of a tribal community given the possible consequences of such projects - from complete displacement to irreversible ecological damage. But the manner of doing EIA as is, runs contrary to the provisions of PESA read together with the Scheduled Tribes and Other Forest Dwellers Recognition of Forest Rights Act. That both are Acts of the Indian Parliament and the former is meant to supersede any legislation that is not in consonance with it, require recognition and reiteration. . In order to make this devolution meaningful, each state with PESA areas should set up a panel of environmental experts whose services should be available to the gram Sabhas in the process of giving consent or dissent to a project. Details of the panel members should be widely publicized and made known to all gram Sabhas, especially in the PESA areas.

Former President K R Narayanan's words to the republic in 2001 are worth reiterating here: "One pre-condition for the success of developmental projects in our extensive tribal areas is that we should take into confidence the tribals and their representatives, explain the benefits of the projects to them, and consult them in regard to the protection of their livelihood and their unique

cultures. When they have to be displaced the resettlement schemes should be discussed with them, and implemented with sincerity. This could avoid many critical situations, and we will be able to carry the tribals with us.”

**ii.** PESA’s principal contribution lies in supplying an institutional mechanism for addressing issues and conflict resolution through an open, transparent and deliberative manner. However, due to its failure in implementation at the ground level, conflicts get compounded creating fertile ground for alternative mobilizations. The retrieval of the democratic space through the operation of the institutional mechanisms mandated by PESA is an absolute necessity for other developmental implications of PESA to find fuller expression. Given the alternative mobilisation’s roots in tribal communities, a nuanced approach is needed to help neutralize their effects. This should include political efforts geared at convincing groups to abjure violence. The state should be accommodating of all political viewpoints and people’s movements within the constitutional framework - even those that fundamentally question its policies and conduct. In the words of one analyst, ‘Viewed one way, we could argue that the adivasi cadres in the villages represent some of the best citizens of that strata of society – politically aware, engaged and willing to struggle for the dignity and rights of their community. We should instead engage them in our collective efforts to build a more inclusive and humane society’ (IRMA conference on PESA, February 2010)

**iii.** Through the past year, some sections of government have stated that the PESA areas will see ‘an injection of speedy and aggressive development’, or that ‘these areas will be saturated with development.’ However, this approach suggests continuing bureaucratic control and ignores the principles of self-governance and community control over resources, as enshrined in PESA. In the current context of the people’s mistrust of the state, the term ‘aggressive development’ needs to be abandoned, and if not, then clearly defined for the consent of the community. Through financial and juridical devolution to gram sabhas, a model of participatory and community-centric development should be nurtured, as opposed to ‘aggressive development’ from above. In the words of one analyst, ‘welfare schemes are important, but taken alone they do not complete our transformation from subjects to citizens. There is no way of having genuinely inclusive

governance in rural India without strengthening panchayat institutions' (Mehta, 2009). A village in Andhra Pradesh suggests the efficacy of this alternative approach:

### **KAMAYYAPETA in VISHAKHAPATNAM, ANDHRA PRADESH<sup>31</sup>**

**Kamayyapeta has a unique history of self-rule, and this has contributed to its pioneering efforts to implement the Panchayat Extension to Scheduled Areas Act (PESA) in Andhra Pradesh. A community-based organization (CBO) known as Adivasi Mitra based in the nearby town of Paderu has used PESA to build on the community's history of autonomous decision-making and develop a successful gram sabha model of governance for tribal people. Other tribal communities have made efforts to copy the success of Kamayyapeta's use of the gram sabha under PESA.**

The village of Kamayyapeta has approximately 150 families and is located in the Hukumpeta Mandal of Visakhapatnam. Various tribal groups are represented in the community: Bhagata, Konda Dora, Valmiki Kummari, Nooka Dora, Kondu and Kammara. The village was named after a tribal leader from the area, Marri Kamaya, who opposed the zamindari land system and organized community resistance to British efforts to seize local forest resources, and after independence, against the Forest Department and other officials wanting to cut down the local teak trees. Kamaya laid the foundations for community participation in local governance when he constructed a town hall in the 1950s for public discussions.

After his death, the village did not actively participate in the Panchayat elections, finding the Panchayati Raj system too removed from their traditional governance practices. Self-help groups (SHGs) began to organize in the 1980s, wanting to improve the provision of basic government services and use banks to finance local projects. Adivasi Mitra, a local organization with strong ties in the region, began to coordinate initiatives to facilitate the gram sabha process with Samata in 1996. To further the Kamayyapeta villagers' understanding of the gram sabha and how it can improve local governance, the community visited another village, in Gadchiroli, a Schedule V area in Maharashtra. By observing the successful gram sabha model there, villagers of Kamayyapeta were encouraged to replicate some best practices when they set up their own gram sabha. Samata organized follow-up visits for community leaders between the two villages to ensure a broader dialogue on this issue. Dr. Jayaprakash Rao of Osmania University, an expert on PESA, also visited Kamayyapeta to offer insights to the community.

Kamayyapeta was the first village in Andhra Pradesh to organize an official gram sabha with its neighboring villages. The momentum from this initiative led to several other community projects, like setting up a town hall for public discussions and better management of local administrative projects.

The gram sabhas today follow the guidelines in the central PESA Act. They hold open elections for the gram sabha every two years to select a president, vice-president, joint secretary, secretary, treasurer, and a representative member from each village. This elected body identifies issues in respective communities and keeps the people abreast of new government schemes that will affect them. The gram sabha members meet once a month; every three months a joint meeting between all 22 villages occurs. Gram sabha members invite the mandal revenue officer

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<sup>31</sup> This case study was highlighted by Samata, a tribal rights group based in Vishakhapatnam

(MRO), mandal development officer (MDO), panchayat secretary, as well as other government officials and workers for providing information, e.g. regarding land assets, health status, educational status and population. Displayed in each village, this information is then used for planning within the gram sabha. The village youth conduct household surveys each year to update the information. Some key projects facilitated by the gram sabha have so far included: strengthening the 32 SHGs Active in the area; increasing access to grain banks; building awareness about health, education and relevant laws to the villagers (like the Forest Rights Act); and the implementation of the Sustainable Tribal Empowerment Project (STEP).

In retrospect, the villagers are pleased with many of the outcomes of the gram sabha process. They feel that government responds more quickly to their needs, particularly regarding complex issues around land ownership. Communities have a better relationship with the Forest Department. Government service providers – like nurses, teachers and *anganwadi* workers (who focus on helping children and mothers) – show up more regularly to the communities, who can hold them responsible through the gram sabha. Quality of education has measurably increased, especially for 10th and 12th standard youth. The panchayat has responded to three years of pressure by the gram sabha to improve basic infrastructure for roads, bridges, water and electricity. The gram sabha has directly approved development projects through written resolutions.

In spite of the successes of the gram sabha organized by Kamayyapeta and the surrounding villages, the state government has not yet offered formal recognition of the gram sabha. The Central PESA Act lists specific rights and duties of the gram sabha, but the Andhra Pradesh state government has not passed rules for the PESA Act's implementation. Furthermore, the version of PESA passed by the Andhra Pradesh state government strips away some of the authority of the gram sabha in favour of higher levels of government administration. For example, the Central PESA Act puts the gram sabha in each village in charge of local resource management, issuing caste and income certificates and issuing "utilization certificates" for development projects. Because the state government has not written the rules for implementation of PESA, many of these powers continue to belong to higher – and less responsive – levels of government. This often leaves local administrators and officials unaware of new programs, and these programs are consequently not implemented, like the food-for-work program sanctioned by the union government that never reached Kamayyapeta. Even with these obstacles, the Kamayyapeta model shows that dedicated community leaders, sustained outside support, information sharing and strong community organization can lead to effective decentralized democracy initiatives at the local level.

**iv.** There is a complete absence of a functioning grievance redressal mechanism at the moment to address a routine violation of rights of a villager from the tribal community. This furthers the community's sense of alienation. Opinion on the ground is widespread that functionaries of the state and other powerful interests currently are unaccountable for their non-implementation or violation of PESA, and so there should be a punitive mechanism. (This is also a blind spot in the draft rules currently being circulated by the Ministry of Panchayati Raj to the PESA state governments). Appeals to institutions like the Governor or Commission for Scheduled Tribes

and the National Human Rights Commission go unacknowledged, or are caught up in interminable procedures and delays. In the disturbed areas, there is a need to respond to this situation and set up a mechanism on the lines of a redressal commission to do a National Inquest of all the past violations of PESA. The government at the highest level is best placed to imagine the contours of this mechanism. Once this begins to take effect PESA provisions especially those relating to the competence and centrality of gram sabhas should get implemented so as to make the changes irreversible in the greater interest of democracy and justice.

v. Section IV of the Right to Information Act, mandating *suo moto* disclosures should be strictly implemented in Schedule Five villages, with Information Commissioners being asked to monitor any violation of this. Social audit rules should be issued for all government programs in Schedule Five areas, along the lines of the NREGA social audit rules in Andhra Pradesh. On the lines of the Citizen's Panel for NREGA constituted last year by the Ministry of Rural Development, the Ministry of Panchayati Raj should constitute a National Citizen's Panel for PESA. Eminent citizens should be empanelled for each of the PESA districts, and biannual meetings held for updates chronicling the status of the law's implementation or violations on the ground.

vi. There should be a National Inquest, looking into all complaints from Schedule Five areas, currently pending with the offices of the Governors and the national commissions. This inquest may be carried out under a Commission with clear terms of reference. There should be a time-bound process of penalizing violations ascertained by this commission's findings, and policies formulated or directives issued in the light of the insights gained through this exercise to prevent further abuse. Such an effort by the state will help address the alienation of the people, as well as create a much-needed sense of justice.

Along with the creation of those enabling conditions, adopting the following measures will strengthen PESA. <sup>32</sup> These are as under:

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<sup>32</sup> Many of these recommendations have been variously advocated, and have been amalgamated in the report by the B.D Sharma Committee.

1. PESA unambiguously states (section 5) that any provision of a law ‘which is inconsistent with the provisions of PESA ‘shall continue to be in force until amended or repealed by a competent legislature or other competent authority or *until the expiry of one year from the date on which this Act receives the assent of the President*’.<sup>33</sup> As that time limit expired on 23<sup>rd</sup> of December 1997 a due cognisance of the Act would entail that all provisions in the laws of the concerned States and the Centre that are inconsistent with the basic features outlined in Section 4 of PESA would be deemed to have lapsed. In particular, it should notified that Section 4 of PESA should be deemed to comprise the basic frame of administration for the Scheduled Areas under the Fifth Schedule and any other rule or act or a executive or a legislative order or an overture contrary to the above be deemed as null and void and ultra vires of the Constitution of India.
2. The letter and spirit of the ‘Samata Judgement’ should be enforced in all acquisition of tribal land for private companies.
3. Consultation of the Gram Sabha should be held as ‘Prior Informed Consent’ as provided in the Forest Rights Act and strictly enforced.
4. Land for Land must be a fundamental requirement for acquisition of tribal lands.
5. A clear and categorical provision should be made in the Panchayati Raj Act or the Revenue Law through a notification under Para 5(1) of the Fifth Schedule or in the to empower the Gram Sabha to restore the unlawfully alienated land to its lawful owner.
6. All pending cases in any Court of Law in which the land of a tribal is alleged to have been illegally transferred or occupied by any person, real or juridical, on the date of the said notification shall stand transferred to the Gram Sabha, in whose jurisdiction the land is situate, for disposal in accordance with the provisions of Section 4(m) (ii) of PESA as recommended by the B.D Sharma Committee Report.
7. The record of land maintained by the revenue official at the village level should be placed annually before the Gram Sabha, for information, so that people become aware about it’s contents and take suitable legal measures for rectification of wrong entries;

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<sup>33</sup> Emphasis added.

8. Any dereliction by any person with regard to the above provisions shall be a penal offence.

As advocated by the B.D Sharma Committee report there are certain steps with regard to the mining that may be considered forth with:

1. The mineral rules should be amended on the pattern of Madhya Pradesh transferring all quarries with annual lease value up to rupees 10 lakh to the gram sabha and Panchayats at different levels. This dispensation should cover all minor minerals;
2. Consent of concerned gram sabha before awarding a lease should be made mandatory as per the directions of the ministry of mines and minerals dated 26<sup>th</sup> December 1997;
3. The practice of outright purchase of mineral bearing land by the mining companies should be stopped forthwith for the simple reason that the mining act envisages only a lease in these cases. All the deals of any description whatsoever should be converted in the form of leases for which a provision may be made in para 5 notification;
4. The term ‘ public purpose’ should be defined that the concerns of the people likely to be affected, their perception about their place in the new system are given a major weightage compared to the arithmetic of the other side, the former being accepted as non-negotiable;
5. The provisions about restoration of the leased lands, as far as possible, to their original status should be formally placed before the gram sabhas at the time of seeking their permission to enable them to incorporate suitable conditions therein and the follow-up action.

## **Conclusion**

As the above analysis suggests, PESA's passage was a radical act by our democracy, and fulfilling its mandate required intense and sustained efforts. PESA, as enacted by Parliament in December 1996, should have been adopted by the respective state governments within the given time frame of a year from its passage. Thus, for any unfinished legislative agenda remaining for PESA in any state, the Central Act should have performed come into immediate implementation. A decade-and-a-half on however, its promise of self-governance has a long way to go, even as tribal communities grapple with intensifying challenges and conflicts, against the backdrop of liberalization.

In the recent past however, forced by the need to end the perceived threat of spreading left-wing extremism, there has been a revival of official interest in PESA. The current focus on PESA represents an opportunity to reverse past neglect and to end further violations. Supplemented with the Forest Rights Act of 2006, PESA provides a powerful legal framework to address the issues of rights, with fullest regard to historical facts and traditions of these communities.

Communities in Schedule Five areas today are living through intense hardship, conflict, dispossession, and cultural turmoil. As one analyst has argued, 'Social oppression, discrimination, bias, poverty and neglect faced by...the tribals have created in large parts of the country a social environment unknown to most Indians with higher social status and income. Indian society is deeply implicated in this. Our institutions created it, our system maintains it, and our society condones it' (Saxena, 2009). But PESA—if honestly honoured—might help us as a democracy, to begin rewriting this tragic story. Incidentally, this may be the last opportunity that the State may have to retrieve PESA. The alternative is too horrific even to contemplate for the Tribal Areas.

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## **ANNEXURE 1 – The Act**

### **THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 (24th December, 1996)**

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

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

#### **Short title**

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

#### **Definition**

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

#### **Extension of part IX of The Constitution**

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

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

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

- (a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
- (b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;
- (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
- (d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
- (e) every Gram Sabha shall-
  - i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
  - ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

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

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;

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

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

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

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

(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

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

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;

(o) the State Legislature shall endeavor to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

Continuance of existing laws on panchayats:

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President;

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

K.L. MOHANPURIA,

Secretary to the Government of India