HAMARA GAON HAMARA RAJ
A BOOKLET ON TRIBAL SELF RULE LAW IN MADHYA PRADESH

Enviro Legal Defence Firm

June 2004
# TRIBAL SELF-RULE LAW IN MADHYA PRADESH

## TABLE OF CONTENTS

**INTRODUCTION** ........................................................................................................................................................3

**I: WHAT IS PESA** .......................................................................................................................................................4

1.1 PESA - THE LAW ..............................................................................................................................................4

1.2 APPLICABILITY OF PESA ..............................................................................................................................4

1.3 SIGNIFICANCE OF PESA ..............................................................................................................................4

**PART II: PESA FOR US** ...........................................................................................................................................7

2.1 APPLICABILITY OF PESA IN MADHYA PRADESH .................................................................................7

2.2 OUR POWERS! BUT HOW DO WE EXERCISE THEM? ..............................................................................7

2.2.1 WE, THE PEOPLE .....................................................................................................................................8

2.2.3 THE POWERS EXCLUSIVE TO THE PANCHAYAT AT THE APPROPRIATE LEVEL: ........13

2.2.4 POWERS OF GRAM SABHA OR PANCHAYAT AT THE APPROPRIATE LEVEL: ...............14

2.2.5 POWERS OF GRAM SABHA AND PANCHAYAT AT THE APPROPRIATE LEVEL: ........14

**POWERS OF GRAM SABHA AND PANCHAYAT AT APPROPRIATE LEVEL: PROVISIONS OF CENTRAL PESA VERSUS MP PESA** .......................................................................................................14

2.2.6 RESERVATION OF SEATS OF THE OFFICE BEARERS FOR SCHEDULED TRIBES:........17

2.3 HOW TO MAKE PESA WORK FOR US: SOME SUGGESTIONS.........................................................17

2.3.1 MAKING PESA WORK FOR US! .............................................................................................................17

2.3.2 USING THE GRAM SABHA AS A FORUM .....................................................................................17

2.3.3 USING THE RIGHT TO INFORMATION ..........................................................................................18

**ANNEXURE I** ............................................................................................................................................................22

**LIST OF SCHEDULED AREAS IN MADHYA PRADESH** .......................................................................................22

**ANNEXURE NO. II** ..................................................................................................................................................23

THE PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996 .................................................................23

(ACT 40 OF 1996) ..................................................................................................................................................23

**ANNEXURE III** ....................................................................................................................................................27

THE MP PANCHAYTI RAJ EVAM GRAM SWARAJ ADHINIYAM .............................................................27

CHAPTER XIV-A SPECIAL PROVISIONS FOR PANCHAYATS IN THE SCHEDULE AREAS .................................................................27
TRIBAL SELF-RULE LAW IN MADHYA PRADESH

Introduction

The 1990s witnessed a committed effort by the Government of India to decentralize governance through empowerment at the village level. As a first step towards representative and participatory democracy, a three tier Panchayati Raj System was granted constitutional status through the 73\textsuperscript{rd} Amendment Act, 1992\(^1\), which came into force on 24\textsuperscript{th} April 1993. This Act directed the State legislatures to form laws that not only enabled the establishment of Panchayats, but also vested in them such power and authority as was necessary to make them institutions of self-government. The provisions of the Act however, did not extend to those tribal areas mentioned in the fifth schedule of the Constitution (hereafter referred to as Scheduled Areas). The system of Panchayats was extended to these Scheduled Areas through the enactment of the Panchayat (Extension to Scheduled Areas) Act on 24\textsuperscript{th} December 1996 (PESA).

Box 1.1 What is the Constitution?

The Constitution of India came into force on 26\textsuperscript{th} January 1950. This Constitution is the foundational law of our nation. All other laws and the executive acts of the State draw their validity and legitimacy from the constitution.

\(^1\) 73\textsuperscript{rd} Amendment Act- This means that the Constitution of India has been amended (changed) 73 times. An amendment to the Constitution is done whenever the Government of India feels that an issue has to receive a nation wide acceptance. An Amendment of the Constitution may be initiated only by the introduction of bill for the purpose in either House by majority (i.e. more than 50\%) of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. It shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended. Therefore through the 73\textsuperscript{rd} Amendment Part IX was inserted in the Constitution, which for the first time accepted that Local Self Government in the form of Panchayat Raj Institutions has been made the law of the land.
I: What is PESA

1.1 PESA - the law

PESA is a simple yet comprehensive and powerful law that empowers villages of the Scheduled Areas to address the issues that emerge in their daily lives. This Act extends the Part IX of the Constitution relating to Panchayats to Scheduled Areas. This means that through the PESA, the system of Panchayats has been extended to the Scheduled Areas in general however, it would be subject to the exceptions and modifications that are mentioned in the Act.

1.2 Applicability of PESA

The PESA is applicable to all the Scheduled Areas of the nine states mentioned in Box 1.2. To give effect to the provisions of Act, the state legislatures were required to form laws for the scheduled areas of their respective states, in keeping with the Central PESA. There are two important things to bear in mind here; one that scheduled areas may be the entire district or blocks within a district and also Panchayats or villages within blocks. Second, the States are required to amend their respective Panchayat Laws or Subject matter laws or both to bring it in line with PESA.

1.3 Significance of PESA

The primary objective of decentralised governance is to give the village people the power to govern themselves. Such decentralization requires an institutional structure, as well as an allocation of powers and responsibilities within this structure. The PESA therefore recognises the village community as the basic unit of governance and prescribes the creation of Panchayati Raj Institutions at different levels. At the village level, it prescribes the recognition of the Gram Sabha or the Village Assembly. This Gram Sabha elects the Gram Panchayat, which is the

---

Box 1.2 The Scheduled Areas

Scheduled areas are so called because they have been listed under the fifth schedule of Article 244 (1) of the Constitution. Historically these scheduled and tribal areas were excluded from the normal operation of ordinary law to preserve the social customs & to safeguard the traditional vocations of the tribals living in those areas. Nine states in the country today, have Scheduled Areas. These are Andhra Pradesh, Himachal Pradesh, Orrisa, Jharkhand, Gujrat, Rajasthan, Maharashtra, M.P. and Chattisgarh. Scheduled areas may be the entire district, or blocks within a district or Panchayats or villages within blocks.
body of elected representatives of the Gram Sabha. At the block level, it mandates the creation of the Panchayat Samiti and at the district level, that of the Zila Parishad. The Gram Panchayat, the Panchayat Samiti and the Zilla Parishad are collectively called the Panchayat at Appropriate Level (hereafter PAL).

The PESA, further, politically empowers the village community for planning village development, managing natural resources and resolving conflict in accordance with traditional customs and practices. Such empowerment is through the Panchayati Raj Institutions mentioned above.

PESA tries to empower the Panchayati Raj Institutions through six basic methods.

1) By recognising the central role of customary laws, social and religious practices and traditional management practices of community resources in the lives of the tribals and making these the founding principle of self-governance in Scheduled Areas. This principle is also reflected in the definition of village itself. The act defines a village as consisting of ‘a habitation (group of habitations), hamlet (group of hamlets) comprising a community

---

### Fig. 1.1 Distribution of Powers in PESA

<table>
<thead>
<tr>
<th>The founding principles of self-governance in Scheduled Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) customary laws, social and religious practices and traditional management practices of community resources play a central role in the lives of the tribals.</td>
</tr>
<tr>
<td>(ii) the Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers exclusive to the Gram Sabha</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) the power of approval of the developmental plans, programmes and projects for social and economic development,</td>
</tr>
<tr>
<td>(ii) the power of identifying and selecting beneficiaries for poverty alleviation and other programmes and the power for granting of certificate of utilisation of funds or plans programmes and projects that are implemented</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Power exclusive to the PAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power for planning and management of Minor Water Bodies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers to Gram Sabha or PAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects</td>
</tr>
<tr>
<td>(ii) 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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Powers to Gram Sabha and PAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants</td>
</tr>
<tr>
<td>(ii) ownership of minor forest produce prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe</td>
</tr>
<tr>
<td>(iii) control over institutions and functionaries in all social sectors</td>
</tr>
<tr>
<td>(iv) management of village market</td>
</tr>
<tr>
<td>(v) control over Money Lending</td>
</tr>
<tr>
<td>(vi) control over local plans and resources for such plans including tribal sub-plans</td>
</tr>
</tbody>
</table>
and managing its affairs in accordance with traditions and customs.’ The Gram Sabha has also been envisaged for such tradition-based villages and not for the existing villages, which are revenue villages notified by the Governor. Further, the PESA accepts the competence of Gram Sabha in safeguarding and preserving traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution. Accordingly, the Act dictates that all state legislation on Panchayats must be in accordance with the customary laws, social and religious practices and traditional practices for management of community resources.

B) By according some powers exclusively to the Gram Sabha. These powers include the power of approval of the developmental plans, programmes and projects for social and economic development, the power of identifying and selecting beneficiaries for poverty alleviation and other programmes and the power for granting of certificate of utilisation of funds or plans programmes and projects that are implemented by the Gram Panchayat.

C) By giving the Panchayat at appropriate level the exclusive power for planning and management of Minor Water Bodies.

D) By empowering the Gram Sabha or the PAL for consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects, and for 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.

E) By empowering the Gram Sabha and the PAL through powers that are perhaps the most important for the lives of the tribals. These powers make the Gram Sabha a necessary unit of empowerment along with any other level of Panchayat and include enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants; ownership of minor forest produce; prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe; control over institutions and functionaries in all social sectors; management of village market; control over Money Lending and also control over local plans and resources for such plans including tribal sub-plans.
F) By necessitating proportional representation and reservations for Scheduled Tribe members. Proportional representation means that if the scheduled tribe population in a village is 80% of the total population, then in the Gram Panchayat, 80% of the members must be from the Scheduled tribes. Moreover, for facilitating local leadership from the tribal community, the posts of Sarpanch and Up-sarpanch in the Scheduled Areas are reserved for members of the Scheduled tribes.

**Part II: PESA for Us**

The previous section briefly presented the provisions of the Central PESA. In this part of the booklet, we shall focus on the PESA as applicable in the Scheduled Areas of Madhya Pradesh.

**2.1 Applicability of PESA in Madhya Pradesh**

As mentioned earlier, all nine states that have Scheduled Areas were required to amend their Panchayat and/or the Subject Matter laws to extend Panchayati Raj in the Scheduled Areas, in accordance with the Central PESA. Towards this, the Government of MP enacted the Panchayati Raj Dwitiya (Sansodhan) Adhiniyam 1997. This Act, along with Panchayati Raj (Sanshodhan) Adhiniyam 1999 has amended the Panchayat Act of Madhya Pradesh\(^2\) substantially to conform to the spirit of PESA, and to extend Panchayati Raj to the Scheduled Areas of MP (Annexure I). Let us call this law on Tribal Self Rule MP PESA.

**2.2 Our Powers! But how do we exercise them?**

The MP PESA has allocated powers and functions to the Gram Sabha, the Gram Panchayat, the Janpad Panchayat and the Zila Panchayat (Figure 2.1). To understand the full strength of our powers, it is essential to not only know what powers have been allocated but also to know in what detail such powers have been distributed.

---

\(^2\) The Panchayat Act of Madhya Pradesh has been amended in 2001 to be renamed as “Panchayat Raj Evam Gram Swaraj Adhiniyam 1993”
2.2.1 We, the People

The Central PESA acknowledges the pivotal role of customary laws, social and religious practices and traditional practices for management of community resources, in our tribal lives. It therefore lays emphasis on traditions and customs while defining the village. Conforming to this spirit of the Act, the MP PESA defines ‘Village’ in the Scheduled Areas as consisting of ‘a habitation /a group of habitations or hamlet /group of hamlets comprising a community and managing its affairs in accordance with traditions and customs’. However the official declaration of the same has been left to the Governor of our State.

Guiding Suggestions No.1

Our traditions and customs were transmitted from one generation to another, orally. We did not maintain written documents on these. Yet we are well versed with these traditions and customs, and can now define our village according to them. (Figure 2.2)

Fig. 2.2 Defining our Village

A, B, C,D and E were five tolas in a Scheduled Area, all belonging to the same tribe. Though they were separated by a road, and had different wells and handpumps, forest and grazing lands, these tolas decided to form one village. These tolas believe that they have all descended from the same ancestors. They worship the same Devi, they follow the same customs, and they have traditionally lived as one village. They always celebrated their festivals together and have a common Mela. Residents from these tolas participate in the ceremonies associated with birth, marriage, and death in whichever tola. Customs, and have traditionally lived as one. Even their disputes are resolved through the same mechanism! Hence, they formed one village.

Similarly, we can define our own village, in accordance with our traditions and customs!
In consonance with the basic principles of the Central PESA, our State has now recognized by law that the Gram Sabha shall endeavour to take measures to safeguard & preserve:

Our traditions and customs  
Our cultural identity  
Our community resources  
The Customary mode of dispute resolution.

It is important to mention here that the MP Gram Nyayalaya Adhiniyam, 1996, recognises the power of the Gram Sabha to safeguard and preserve the customary mode of dispute resolution. Section 31 of this Adhiniyam states that the Gram Sabha in Scheduled Areas shall decide the cases (Annexure IV) in accordance with the customary law, and social and religious practices. Only if the Gram Sabha is unable to/ or fails to decide the case, will the matter be referred to the Gram Nyayalaya.

2.2.2. The powers and functions exclusive to our Gram Sabha

Our Gram Sabha or village assembly has been defined as consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level. Our State is unique because it is the only State in the country that includes both, persons in the Revenue as well as Forest villages in the Gram Sabha, thereby equating the forest villages with the revenue villages. This progressive step has been taken enacted through the Panchayati Raj (Sansodhan) Adhiniyam 1999.

In another progressive step, Madhya Pradesh has extended some of the provisions of the Central PESA, to all the Gram Sabhas in the State. The powers and functions of the Gram Sabha in the Scheduled Areas therefore, not only consist of the general powers and functions of the Gram Sabha but also those that have been allocated exclusively to the Gram Sabha in the Scheduled Areas.  

Though all these powers and functions have a critical role to play in the empowerment of the Gram Sabha, in this Section we will focus only on the provisions that conform to those mentioned in the Central PESA.

---

3 Annexure III is a copy of the Act and gives a complete list of Powers and Functions of the Gram Sabha in Scheduled Areas
Box 2.1 Powers exclusive to the Gram Sabha

Powers only in the Scheduled Areas
1. To manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the constitution and with due regard to the spirit of other relevant laws.

Other Powers
1. The Gram Sabha shall
   - Approve all plans including annual plans, programmes and projects for economic development before such plans are taken up for implementation by the Gram Panchayat
   - Lay down the principles for identification of schemes and their priority for economic development of the village
   - Identify and select persons as beneficiaries under the poverty alleviation and other programmes
2. Every Gram Sabha has the power to ascertain and certify the proper utilisation by the Gram Panchayat of the funds for plans, programmes and projects

We shall manage our natural resources
Our Gram Sabhas in Scheduled Areas have also been given the power to manage natural resources such as land, water and forest that lie within the area of our village. While we have the power to manage these in accordance with our tradition, the law requires our management to be in harmony with the Constitution and to have due regard to the spirit of other relevant laws in force. At the same time, it is our responsibility to ensure that access to these resources is equitably distributed among all households in the Gram Sabha.

We shall approve all plans including Annual Plans, Programmes and Projects for economic development before such plans, programmes and projects are taken up for implementation by the Gram Panchayat, and
We shall lay down the principles for identification of schemes and their priority for economic development of the village
The economic development requirements of different villages are likely to be different. The above provisions give us the power to lay down the criteria for identification of the schemes and their priority in our village. Further, these plans, projects and programmes must have our approval, before they are implemented.
We shall identify and select the people who should benefit under the poverty alleviation and other programmes.

The Government has been implementing poverty alleviation programs in our villages, for some time now. In the past, the beneficiaries from these programmes were decided by the Teacher, or some officer authorised by the State. This selection often left us dissatisfied. The State has realised that we know our village and the economic condition of our fellow-villagers better than any outsider. Therefore we have been given the power to identify and to select the beneficiaries under the poverty alleviation and other such programmes.

Note that the identification and selection of beneficiaries from poverty alleviation programmes is not restricted to formal Below Poverty Line (BPL) Surveys alone.

Guiding Suggestions No.2

In identifying the principles for identification of schemes and their priority, as well as in granting approval, we must keep in mind the following factors:

- We must take into account the desirability of the project in terms of whether there is a felt need for the outputs to be achieved through project completion.
- The viability of the project must also be determined. This assessment may be carried out on the basis of the objectives, the time-period for achievement of these objectives and the costs involved.
- The benefits that result from the project are critical in granting approval. Both, the short-term or immediate gains and the long-term benefits should be taken into account. In addition to the absolute benefits, we must also take into account the distribution of benefits among the Gram Sabha so that the village as a whole can develop.
- We, as members of the Gram Sabha must grant approval for projects only when we are satisfied on all the above parameters.
Guiding Suggestions No. 3

We must exercise this power carefully and in selecting the beneficiaries, must keep in mind:

- The extent of land that is owned by a beneficiary. Clearly the \textit{land less} must be given a priority.
- The \textbf{economic condition} of the proposed beneficiary on the basis of his/her source of income, income of the family members or the individual, total number of members in the family including the earning members and the dependants.
- The \textbf{social factors} affecting the proposed beneficiaries and the alternative opportunities available to them. For instance, a widow with no source of income or an orphan child with no relatives may require more help than a person who is getting insufficient daily wages.
- An attempt may be made to ensure that different families benefit from the different poverty alleviation programmes, and only few families are not at an advantage.
- The extent to which the individual is capable of utilising the proposed benefit may also be a deciding factor.

In any case, the parameters should be well in place before the identification of the beneficiaries so that there is a sense of fairness and justice.

We have the power to ascertain and certify the proper utilisation by the Gram Panchayat of the funds for plans, programmes and projects.
In addition to approving the plans and projects undertaken by the Gram Panchayat, before implementation, we also have the power of ascertaining whether the funds allocated to these projects and programmes have been properly utilized by the Gram Panchayat. While making an assessment of the same, we must keep in mind the following factors:

The amount of money which has been spent on the project;
Whether such amount is within the amount sanctioned or exceeds it;
Whether such amount was used properly.
2.2.3 The Powers Exclusive to the Panchayat at the Appropriate level:

As per the Central PESA the planning and management of Minor Water Bodies is to be vested with the Panchayat at Appropriate level. In our State the power to plan, own and manage water bodies is given to the Janpad Panchayat or the Zila Panchayat. It is not clear as to which of these bodies will exercise this power. Further the power over these water bodies is only up to a specified water area, the extent of this water area is still unclear.

It is important to mention here that while the Central PESA talks about only the planning and management of minor water bodies, in our State even the ownership of the same has been vested with the Zila Parishad.

At the same time the Gram Sabha has also been empowered to plan, own and manage minor water bodies upto a specified water areas situated within its territorial jurisdiction. It can also lease out any minor water body upto a specified area for the purpose of fishing and other commercial purposes; and, regulate the use of water of rivers, streams, and minor water bodies for irrigation purposes. Thus while the Central PESA totally excluded the role of the Gram Sabha from the ambit of this power for reasons best known the people who framed the law, our State PESA envisages the role of our Gram Sabha here.

Guiding Suggestions No.4

Additionally we can consider the following factors:

- Whether necessary and sufficient material or labour was used or it exceeded the reasonable standards.
- Whether the project has been completed within the time-period and if not, then the reasons;
- The benefits for which such expenditure has been incurred;

Once we are satisfied with the fund utilisation, we shall issue a Certificate of Utilisation to the Gram Panchayat. We may use a format for granting such a Utilisation Certificate to the Panchayat.
2.2.4 Powers of Gram Sabha OR Panchayat at the Appropriate Level:
Certain powers have been left to the State's discretion to be devolved either to Gram Sabha or Panchayat at appropriate level. (See table 2.1)

Table 2.1

<table>
<thead>
<tr>
<th>POWERS OF GRAM SABHA OR PANCHAYAT AT THE APPROPRIATE LEVEL (As per the Central PESA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation before</td>
</tr>
<tr>
<td>o land acquisition for developmental projects;</td>
</tr>
<tr>
<td>o resettling or rehabilitating the people affected by such projects.</td>
</tr>
<tr>
<td>Recommendation for</td>
</tr>
<tr>
<td>o grant of license or mining lease for minor minerals;</td>
</tr>
<tr>
<td>o grant of concession for exploitation of minor minerals by auction.</td>
</tr>
</tbody>
</table>

It is important for us to see how has our State exercised this discretion. Our State PESA has omitted all these provisions. None of these powers have been given to either the Gram Sabha or the Panchayat at Appropriate level. We should come forward and demand that the necessary powers be devolved to us by amending the law.

2.2.5 Powers of Gram Sabha AND Panchayat at the Appropriate Level:
The Central Legislation sought to empower the gram Sabha by giving it a pivotal role in the management of natural resources, social and economic development of our villages and protecting tribals from exploitative money lending and market practices. We will now see how have these powers been allocated in our State. (See table 2.2)

Table 2.2

Powers of Gram Sabha And Panchayat At Appropriate Level: Provisions of Central PESA visa-vie MP PESA

<table>
<thead>
<tr>
<th>Issues</th>
<th>Central PESA</th>
<th>MP PESA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcing prohibition, restriction and regulation on the sale and consumption of intoxicants</td>
<td>GS And PAL</td>
<td>Act is silent</td>
</tr>
</tbody>
</table>
intoxicants.  

- Owning minor forest produce.
- Preventing land alienation.
- Exercising control over money lending.
- Exercising control over institutions and functionaries in the social sector.
- Exercising control over local plan and resources for such plans including tribal sub-plans.
- Management of village markets.

<table>
<thead>
<tr>
<th>Act is silent</th>
<th>GS And PAL</th>
<th>GS And PAL</th>
<th>GS And PAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>GS And PAL</td>
<td>Gram Sabha, Janpad Panchayat or Zilla Parishad</td>
<td>Gram Sabha, Gram Panchayat, Janpad Panchayat or Zilla Parishad</td>
<td>Gram Sabha and Gram Panchayat</td>
</tr>
</tbody>
</table>

Thus we see that certain important provisions regarding Minor Forest produce, money lending, intoxicants, prevention of land alienation and have been omitted by our State.

**Exercising control over institutions and functionaries in the social sector**

The Gram Sabha along with the Janpad Panchayat or the Zilla Parishad have been empowered to exercise control over institutions and functionaries in all social sectors. Firstly it is not clear which of these two will exercise this power, *Janpad Panchayat or the Zilla Parishad*?

Secondly, the State has to transfer specific social sectors, say, Health or Education to the appropriate body, which will have the power to exercise control over all institutions and functionaries in that particular social sector. However we have not received any specifications from the State in this regard. Thus the scope and extent of this power is not clear to us.

Further the Act mandates that the Gram Panchayat shall transfer specific social sectors to the Gram Sabha, which in turn shall control the functionaries and institutions in that particular sector. However the Gram Panchayat itself does not have any power over the social functionaries. Thus how will the specific social sectors be transferred to the gram Sabha is not clear to us.
GUIDING SUGGESTIONS No.5

We must first identify the different social sectors and find out which are the institutions as well as functionaries in those social sectors. We must insist that our state provides an exact list of such institutions and functionaries to us.

1. **Exercising control over local plans and resources for such plans including tribal sub-plans.**

This power has been allocated to Gram Sabha along with the Gram Panchayat. Further the same power can be bestowed to either the Zila Parishad or the Janpad Panchayat. It is very important for the Gram Sabha to have direct and regular liaison with these tiers of the Panchayats with whom it shares this power.

GUIDING SUGGESTIONS No.6

For the purpose of knowing who controls the local plans we need to understand two things clearly: first the role of Tribal Developmental Agencies in our village and secondly, the relationship of these Agencies with the Panchayati Raj Institutions and the Gram Sabha in particular.

This power has been given to both Gram Sabha and the Gram Panchayat. Here Cattle fairs are also included.

GUIDING SUGGESTIONS No.7

This power would involve formulating rules regarding, for instance:

1) Regular inspections to ensure that only licensees are selling the produce in such area;
2) The categories of agricultural and non-agricultural produce which are to be sold in such market area;
3) Regular inspections to ensure that the various produce are being sold at the prices so fixed;
4) The kind and description of the scales, weights and measures which alone may be used in transactions in agricultural produce in the market area;
5) Inspection, verification, correction and confiscation of scales, weights and measures in use in such area;
6) Regular inspections to ensure that no adulterated agricultural product are being sold.
2.2.6 Reservation of seats of the office bearers for Scheduled Tribes:
To ensure that the Scheduled castes and Scheduled Tribes get representation in the Panchayats at the village, block and district level, our State PESA provides that the seats of the office bearers in the Village, block and the District Panchayats in Scheduled Areas shall be reserved for the Scheduled Tribes, such reservation shall not be less than half of the total number seats in such Panchayats. Apart from this the seats of the Sarpanchs in village Panchayats, Presidents in Janpad and District Panchayats shall be reserved for the Scheduled castes and Scheduled Tribes.

2.3 How To Make PESA Work For Us: Some Suggestions

2.3.1 Making PESA work for us!
As has been seen above, our state has given us some powers that were originally mandated by the Central PESA, and at the same time, ignored some others (Box 2.7). However, we are the village community and it is our responsibility to make PESA work for us. After knowing our rights, powers and duties, we must come forward collectively to enforce them. It is our duty to protect our Rights; to ensure the responsiveness of the Gram Panchayat, and the Janpad or Zila Panchayat to our needs. In addition, we must put pressure on those who make laws and policies to devolve effective powers upon our community.

2.3.2 Using the Gram Sabha as a forum
For the realisation of our rights, we must attend the Gram Sabha meeting held once each month. The law mandates that not less than one fifth of the total number of members or one thousand members, of which at least one third are women, must be present for the quorum to be complete. However, the meeting is the forum for discussing and planning our village development and therefore, ALL of us must make it a point to attend. During these meetings we must deliberate on issues affecting our daily lives and the development of our village. We must speak our mind and yet give everyone, including the women, a chance to participate in the proceedings.
2.3.3 Using the Right to Information

The Right to Information is our Fundamental Right granted by the Constitution. We can demand all the information relevant to our village. To know about the relevant changes in the laws affecting us, as well as the developmental schemes made for us, we must interact with the Sarpanch on a regular basis and make periodic visits to the offices of the Panchayati Raj Department at the Block, district and the State level. These laws may be in the form of Rules, Government orders and Executive Instructions. To increase our knowledge about the rights available with us we should also interact with local voluntary agencies and the relevant line departments. The Gram Sabha meetings may also serve as a forum for sharing such information as is of interest to the village. The manner in which such information may be obtained and the form is appended as Annexure VI.
### Part III: Legal Interpretation Aids

To appreciate the spirit of PESA it is important to develop an understanding of the meaning of key terms used in law. This section not only presents a glossary of terms highlighted in the text but also the fine distinction between them.

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electoral Rolls</td>
<td>Official List of Voters in the Election</td>
</tr>
<tr>
<td>Gram Sabha only</td>
<td>Powers conferred to Gram Sabha or the Village assembly exclusively like safeguarding and preserving people's customs, granting utilisation certificate to Panchayats etc.</td>
</tr>
<tr>
<td>Panchayat at appropriate level</td>
<td>Powers conferred exclusively to any of the three tiers of Panchayat Raj Institutions (local self-government units) like management of water bodies.</td>
</tr>
<tr>
<td>level only:</td>
<td></td>
</tr>
<tr>
<td>Gram Sabha or Panchayat at</td>
<td>Powers, which are to be exercised either by the Gram Sabha or the Panchayat</td>
</tr>
<tr>
<td>appropriate level:</td>
<td></td>
</tr>
<tr>
<td>Ownership</td>
<td>The exclusive right of possession, enjoyment, and disposal, involving as an essential attribute the right to control, handle and dispose.</td>
</tr>
<tr>
<td>Management:</td>
<td>To look after the day-to-day working and handling of the property</td>
</tr>
<tr>
<td>Control</td>
<td>To exercise restraining or directing influence over the something.</td>
</tr>
<tr>
<td>Subject to laws in force</td>
<td>The law in question should be in consonance with other laws prevailing in the country.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>A favourable statement about something given as an advice not having any binding effect.</td>
</tr>
<tr>
<td>As may be prescribed</td>
<td>The particular subject matter has not been explained in detail and that it would be set down extensively in future by the state.</td>
</tr>
<tr>
<td>Consultation</td>
<td>Deliberation of persons on some subject without a binding</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td>Custom</td>
<td>A rule of conduct which in a given place and among given groups of persons has been followed for a considerable time.</td>
</tr>
<tr>
<td>Customary practice</td>
<td>Habitual practice or course of action that prevails within a geographical or sociological area and is characteristically repeated in like circumstances.</td>
</tr>
<tr>
<td>Customary Law</td>
<td>Law originating from the age-old customs and is recognised as such by the people and the judiciary.</td>
</tr>
<tr>
<td>Customary modes of Dispute Resolution</td>
<td>Resolving disputes between people belonging to a particular community or village by the traditional leaders or heads of such community or village as per their traditions and customs.</td>
</tr>
<tr>
<td>Social and economic Development Project</td>
<td>Projects undertaken for economic upliftment and social welfare of the people at village level. For example, establishment of a hospital or a school in the village.</td>
</tr>
<tr>
<td>Minor Water Bodies</td>
<td>This is not defined in the Central or MP PESA but may include small structures, small tanks, and wells etc. used for day-to-day purposes for drinking, cattle and agriculture.</td>
</tr>
<tr>
<td>Minor Forest Produce</td>
<td>This is not defined in the Central or MP PESA but may include all kinds of forest produce other than timber and fuel wood, and as such is inclusive of several forest produce where the state does not have a monopoly.</td>
</tr>
<tr>
<td>Money Lender</td>
<td>A person who carries on the business of the money lending in the State. It can be an individual or a group of individuals, such as a Hindu undivided family, a company or an institution.</td>
</tr>
<tr>
<td>Social Beneficiaries</td>
<td>Village people who are benefited under any development programme aimed at their social &amp; economic welfare.</td>
</tr>
<tr>
<td>Poverty Alleviation Programmes</td>
<td>Programmes undertaken by the Government to alleviate poverty for instance introducing schemes like Jawahar Rozgar Yojna.</td>
</tr>
<tr>
<td>Village</td>
<td>Village in the scheduled Areas consists of habitation(s) or a hamlet(s) comprising a community and managing its affairs in accordance with its traditions and customs.</td>
</tr>
<tr>
<td><strong>Hamara Gaon Hamara Raj</strong></td>
<td>affair in accordance with its traditions and customs.</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td><strong>Gram Sabha</strong></td>
<td>Gram Sabha consists of persons whose names are</td>
</tr>
<tr>
<td></td>
<td>included in the electoral rolls for the Panchayat at</td>
</tr>
<tr>
<td></td>
<td>Village level</td>
</tr>
<tr>
<td><strong>Panchayat at Appropriate</strong></td>
<td>The Three tiers of the Panchayati Raj Institutions</td>
</tr>
<tr>
<td><strong>Level</strong></td>
<td>including Gram Panchayat at the Village level,</td>
</tr>
<tr>
<td></td>
<td>Janpad Panchayat at the Block level and the Zila</td>
</tr>
<tr>
<td></td>
<td>Panchayat at the District level.</td>
</tr>
<tr>
<td><strong>Certificate for utilisation of funds</strong></td>
<td>Utilisation certificate, which may be given by Gram Sabha to the Panchayat as a means of auditing the expenses, incurred by the Panchayat.</td>
</tr>
<tr>
<td><strong>Village Market</strong></td>
<td>Small markets in local Villages. (Local haats)</td>
</tr>
<tr>
<td><strong>Intoxicants</strong></td>
<td>Anything that ordinarily produces complete or partial</td>
</tr>
<tr>
<td></td>
<td>intoxication. The term includes Indian liquor,</td>
</tr>
<tr>
<td></td>
<td>afeem, ganja, charas, bhang, gud, mahua, tadi, salfi</td>
</tr>
<tr>
<td><strong>Minor Minerals</strong></td>
<td>This is not defined in the Central or MP PESA but</td>
</tr>
<tr>
<td></td>
<td>may include building stones, gravel, ordinary clay,</td>
</tr>
<tr>
<td></td>
<td>ordinary sand etc. The list of minor minerals varies</td>
</tr>
<tr>
<td></td>
<td>from state to state.</td>
</tr>
<tr>
<td><strong>Land Acquisition</strong></td>
<td>Procuring or acquiring ownership of land in the</td>
</tr>
<tr>
<td></td>
<td>scheduled areas for development projects Government.</td>
</tr>
<tr>
<td><strong>Land Alienation</strong></td>
<td>Transfer of property or possession of lands from a</td>
</tr>
<tr>
<td></td>
<td>Scheduled tribe to any other person.</td>
</tr>
<tr>
<td><strong>Social Functionaries</strong></td>
<td>State officials working in the social sector, who</td>
</tr>
<tr>
<td></td>
<td>have been conferred certain duties and powers in</td>
</tr>
<tr>
<td></td>
<td>respect of development and welfare of the village.</td>
</tr>
<tr>
<td></td>
<td>For example officials working in the government</td>
</tr>
<tr>
<td></td>
<td>hospitals, schools, banks and other government</td>
</tr>
<tr>
<td></td>
<td>departments.</td>
</tr>
<tr>
<td><strong>Rules</strong></td>
<td>Rules mentioned in this booklet refer to Rules,</td>
</tr>
<tr>
<td></td>
<td>which have been made in pursuance of legislation,</td>
</tr>
<tr>
<td></td>
<td>or an Act.</td>
</tr>
<tr>
<td><strong>Government Orders</strong></td>
<td>Orders issued by the State and the Central</td>
</tr>
<tr>
<td></td>
<td>Government.</td>
</tr>
</tbody>
</table>
Annexure I

List of Scheduled Areas in Madhya Pradesh

Jhabua district
Mandla district
Sardarpur, Dhar, Kukshi and Manawar tahsils in Dhar district
Barwani, Rajpur, Sendawa, Bhikangaon and Maheshwar tahsils in Khargone (West Nimar) district
Sailana tahsil in Ratlam district
Betul tahsil (excluding Betual Community Development Block) and Bhainsdehi tehsil in Betul district
Lakhnadon tahsil and Kurai Tribal Development Block of Sconi tahsil in Sconi district
Baihar tahsil in Balaghat district
Kesla Tribal Development Block of Hoshangabad tahsil in Hoshangabad district
Kusumi Tribal Development Block of Gopadbanas tahsil in Sidhi district
Karahal Tribal Development Block of Shcopur tahsil in Morena district
Tamia and Jamai Tribal Development Blocks, Patwari Circle Nos. 63 to 68 and Nos. 72 and 73 villages Seergaon khurd and Kirwani Of Patwari Circle No. 62. Villages Mainawari and Gaulie Parasia of Patwari Circle No. 69 and village Bamhani of Patwari Circle No. 97 of Chhindwara tahsil Harral Tribal Development Block and patwari Circle Nos. 26,27,30,31,32,41 to 44,48,49,50-B, 51 and 60 of Amarwara tahsil, Bichhua Tribal Development Block and patwari Circle Nos. 1 to 19,25 to 30, 32 to 37, village Nandapur of Patwari Circle No. 20 villages Nilkantha and Dhandkhapa of Patwari Circle No. 24, villages Ramudhana, silora and Jouri of Patwari Circle No. 31 and all villages, excluding village Muli of Patwari Circle No. 39 of Saunsar tahsil, of Chhindwara district.
Annexure No. II

THE PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996
(ACT 40 of 1996)

(24th December 1996)

An Act to provide/or 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: -

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

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

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

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is 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 affair in accordance with traditions and customs;
   (c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;
(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution:

(e) every Gram Sabha shall —

(i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

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

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the 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 prospective license or mining lease for minor minerals in the Scheduled Areas;
(1) 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 the Gram Sabha;

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

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.
Annexure III
The MP Panchayti Raj Evam Gram Swaraj Adhiniyam

CHAPTER XIV-A SPECIAL PROVISIONS FOR PANCHAYATS IN THE SCHEDULE AREAS

[129-A Definitions: - Notwithstanding anything contained in this act and unless the context otherwise requires in this chapter:

(a) “Gram Sabha” means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted.

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

129-B Constitution of village and Gram Sabha: - (1) The Governor shall by public notification specify a “village” for the purpose of this Chapter.

(2) Ordinarily, there shall be a Gram Sabha for a “village” as defined in sub-section (1):

Provided that if the member of the Gram Sabha so desire, more than one Gram Sabha may be constituted in a village, in such manner as may be prescribed, and each such Gram Sabha may consist of a habitation or a group of habitations or a hamlet or group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.

(3) Not less than one-fifth or one thousand, whichever is less of the total number of members of the Gram Sabha shall form a quorum for meeting of the Gram Sabha and out of which not less than one-third shall be women members.

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

---

1 section 129-A to 129-F ins. By M. P. 43 of 1997 [05-12-1997]
2 Subs. By M. P. Act 23 of 2001, w. e. f. 10-10-2001
129-C Powers and Functions of Gram Sabha: - In addition to the powers and functions contained in Section –7, the gram Sabha in the Scheduled Areas shall also have the following powers and the functions, namely: -

(i) to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and customary modes of dispute resolution:

(ii) to manage natural resources including land, water, and forests within the area of the village in accordance with its traditions and in harmony with the provisions of the constitution and with due regard to the spirit of other relevant laws for the time being in force.

(v) to manage village markets and melas including cattle fair, by whatever name called through the Gram Panchayat;

(vi) to control local plans, resources and expenditures for such plans including tribal sub-plans, and ;

(vii) to exercise and perform such other powers and functions as the State may confer on or entrust under any law for the time being in force.

129-D Functions of Gram Panchayat: - Without prejudice to the generality of powers conferred by this Act, the Gram Panchayat in Schedule Areas, under the general superintendence, control and direction of the Gram Sabha shall also have the powers, namely: -

(i) to manage village markets and melas including cattle fairs by whatever name called;

(ii) to (vi)

(vi) to exercise control local plans, resources and expenditure for such plans tribal sub-plans; and

(viii) to exercise and perform such other functions as the State Government may confer on or entrust under any law for the time being in force.

3 Omitted by M. P. Act 5 of 1999 {5-4-1999}
4 Omitted by M. P. Act 5 of 1999 {5-4-1999}
5 Omitted by M. P. Act 5 of 1999 {5-4-1999}
6 Omitted by M. P. Act 5 of 1999 {5-4-1999}
129-E Reservation of Seats: - (1) The reservations of seats for Schedule Caste and Schedule Tribes in every Panchayat in Schedules Areas shall be in proportion to their respective population in that Panchayat:

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

Provided further that all, seats of Sarpanch or President, as the case may be, of Panchayats at all levels in Schedule Areas shall be reserved for members of Scheduled Tribes.

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

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

(3) In a panchayat in Schedule Areas such number of seats shall be reserved for persons belonging to other backward classes, which together with the seats already reserved for Scheduled Tribes, and Scheduled Castes if any, shall not exceed three-fourth of all the seats in that panchayat.

Applicability in Schedule Areas: - By Notification No. F.1-8-97-XXII-P-2p dated 20th March 1999, Published in Rajpatra Ext. dated 24th March 1999, p.334, the Governor of Madhya Pradesh has applied the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 (1 of 1993), with the exceptions and modifications as under:

“In sub-section (1) of section 129-E after the second provisio, the following provisio shall be inserted, namely:

“Provided also that the Gram Panchayats in the Schedule Areas which may have no population of Schedule Tribes shall be excluded in prescribed manner from allotment of seats or the offices as the case may be, reserved for Panchas or Sarpanchhas belonging to Scheduled Tribes.”

129-F Power of Janpad and Zila Panchayat: - Without prejudice to the generality of powers conferred by this Act, the Janpad Panchayat or Zila Panchayat, as the case may be, in Schedule Areas shall also have the following powers namely:

(i) to plan, own and manage minor water bodies up to a specified water area;
(ii) to exercise, control over institutions and functionaries in all social sectors transferred to them;

(iii) to exercise control over local plans resources and expenditures for such plans including tribal sub-plans; and

(iv) to exercise and perform such other powers and functions as the State Government may confer or entrust under any other law for the time being in force.]