I am thankful to Prof. Vidyut Joshi for asking me to write about the implementation of PESA in Gujarat on the occasion of International day of the World’s Indigenous people, 9th August. This is written deriving lessons from experience of capacity building of Panchayat Raj Institutions (PRIs) and participation in various official and non-official consultations during last 20 years. The title – ‘Making Sense’, is borrowed from the Vishvajit Pandya and Majumdar’s article on Jarawa tribe in Andaman Island (EPW, No.44, Nov.3, 2012). (Year – 2015)

The Panchayat (Extension in Schedule Area) Act, 1996 provides an opportunity for decentralized governance in tribal areas (Schedule V and VI) “in consonance with the customary law, social and religious practices and traditional management practices of community resources”, U/S – 4(b). In the past twenty years there have been very little efforts by the government to implement it. This paper seeks to find out why in Gujarat PESA has not received much importance despite a large section of its population are Bhill tribes with a purpose to draw attention of policy makers and senior administrators.

On January 7, 2011, a Regional Workshop on PESA was organized at Udaipur which was presided by Hon’ble Minister, MoPR, GoI, Dr. C P Joshi. Gujarat was represented by five Zila Panchyat Pramukhs for the tribal districts, respective DDOs. The author was nominated by the Govt. of Gujarat to participate as an NGO representative. This consultation provided a new perspective. All the Zila Panchayat Pramukhs from the PESA districts in their deliberation made it clear that, they do not want to be governed by the customary law. They further made it clear that they no more practice the Bhill customary law in their present day transactions. There might be some socio-cultural Bhill tribal practices, but are limited to the personal sphere of life and not linked to public life. The real representation of this view can be questioned, but this view is predominant the state. In our interaction with the Sarpanches in the PESA area, there has been eagerness to know the provisions and the implementation process. When the elected Sarpanches know that in the Schedule Areas the Gram Sabha or the Panchayats at the appropriate level have the right over planning and management of minor water bodies, management of minor mineral including lease and auction, ownership over minor forest produce, control over money lending, etc. they feel a sense of empowerment. It is evident that they are in favor of decentralization of management over natural resources, minor forest products and minor mineral. The Bhill tribal traditional customs does not come in the process of devolution.
Recently in a review meeting on PESA between the MoPR, GoI and Department of Panchyati Raj, Govt. of Gujarat, (January 30, 2015) the author has the honored privilege to participate. Besides, the Secretaries and other senior level officials, selected PRI representatives from PESA area were also present. On the issue of implementation of 4(d) of the Act, (“every Gram Sabha shall be competent to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution”) there was a presentation on behalf of Rajasthan Government on the implementation of conflict resolution keeping with the community traditions. The PESA rules of Government of Rajasthan (2011, Ch.III, Sec. 11-16) states that local level disputes and minor crime which has provision of punishment of less than two years under the Indian Penal Code, 1860 will be redressed by the Gram Sabha and a Peace Committee formed by the Gram Sabha keeping with community traditions and the spirit of the Constitution of India. On the issues of incidents that breach the peace of the village, matters related to superstition and sorcery (black magic), resolution of disputes, the Peace Committee and the Gram Sabha has the full authority to deliberate and arrive at a decision. Gram Sabha may make a request to the District Collector for presence of an observer to provide factual and scientific information on the matter. When the police receive information on such minor disputes, the officer shall present a detailed report of the matter to the Gram Sabha. As far as possible the minor conflicts shall be resolves by the Peace Committee in the Gram Sabha. This is a provision well harmonized with the tradition and culture of tribal way of conflict resolution. It is interesting to note the response of the Gujarat elected representatives and the senior government officials. They are of the view that any crime or dispute that attracts Indian Penal Code 1860, shall not be given in the hands of tradition and culture.

It is the same Bhill tribe who inhabit in Gujarat and Rajasthan. In one state there is openness to restore the tribal culture and tradition and make it functional in the context of modern day, where as in another state there is strong resistance not only from the administration but also from the tribal community and the leaders. In both Gujarat and Rajasthan, there are civil society groups who have been mobilizing the tribal community and interfacing with the government to implement PESA, particularly transferring power to the tribal community to manage their natural resources and management of local conflict and disputes based on their culture and tradition. In many discussions in Gujarat it has been heard that the matters of dispute resolution can only be transferred to Gram Sabha to be redressed keeping in the tradition, after the tradition and culture of the tribals are codified and checked in terms of alignment with Indian Penal Code. One time eminent Civil Service officer, Mr. B D Sharma, in the campaign to popularize PESA gave a call to all tribal communities emphasizing that it is a revolutionary Act and they must demand for the implementation of the Act. He wrote a popular booklet in Hindi named 'Dole Utha Himalaya' – Himalaya is Shaking !! Sanjay Upadhaya (EPW, No.41, Oct.9-15, 2010) writes that PESA was enacted with very little debate in the Parliament and outside. Even today after 20 years of enactment of PESA, there is very little
understanding on the key thrust of the Act which primarily offers an opportunity to the tribal community to exercise self-governance on management of natural resources.

The governance process in India has been more conversant with implementation of schemes with an administrative apparatus rather than strengthening decentralized governance. The Gujarat administrative mechanism of tribal development is popularly known as ‘Gujarat Pattern’ in which the budget of the tribal sub-plan is ploughed back to different departments for implementation of schemes in the tribal area. It also may be stated here that, in Gujarat the MGNREGA is being implemented by administration at the taluka level. The gram panchayats only plan and approve the works. Perhaps the years of implementation of schemes by the administration while delivered services, has given inadequate emphasis on decentralized governance, particularly as enshrined in PESA. The scheme based development without empowerment of tribal communities has created a feeling even among the tribal leaders that mainstreaming of tribal community will only be possible by participating in the implementing schemes and not strengthening governance based on custom and tradition.

To cite an example, the Kotwalias, a tribal community of south Gujarat has a life around bamboo. Arun Patel of Gujarat Vidyapeeth in an article in Indian Journal of Traditional Knowledge (2005) has documented that the Kotwalias produce twenty two bamboo products on their own. However, their life depends on the release of bamboo by the forest department. They have no ownership over the bamboo forest. There has been no popular movement in Gujarat to extend community rights over any form of natural resources. The adjoining states of Maharashtra and Rajasthan have many assertions to establish community rights and management of natural resources based on traditional practices. The tribal village of Mendha Lekha in Gadchiroli district of Maharashtra has received the distinction of self-governance based on customary law. The story of self-rule in Mendha Lekha is all over the internet.

In Mendha Lekha all decisions are taken in the Gram Sabha. Any outside agency, government, research organisations, NGOs intends to carry out any work has to take permission from the Gram Sabha. The village has constituted Van Suraksha Samiti - VSS (Forest Protection Committee) comprising of Gram Sabha members and Forest Officials. As it is a Gram Sabha led institutional frame work of forest management the rules are set by the Gram Sabha and VSS. The disputes are settled in the Gram Sabha. They have successfully implemented total ban on procurement of liquor from the market. Gram Sabha controls the production of traditional liquor to be used for ceremonial purposes. The decision making has a strong participation of women. Women have power to veto on the decision taken by the Gram Sabha. Mendha Lekha has revived the institution of Ghotul as a source of traditional knowledge for the education of the adolescents.

Interestingly, the self-rule of Mendha Lekha has its genesis much before the 73rd Constitutional amendment and enactment of PESA in 1996. Menda Lekha has inspired many villages and local leaders. Saigata village in Chandrapur district in Maharashtra,
Olavanna in Kozhikode district in Kerala have set up exemplary self-governed system. The water harvesting and management of Olavanna have received both domestic and international recognition. Water management experts from Thailand, Philippines, Sudan, Iran, China and the USA have visited Olavanna. The self-governance of Mendha Lekha can be well understood by its famous slogan – “Dilli Mumbai Amcha sarkar, Amache Ganavat Amhich Sarkar” (Delhi and Mumbai is our Government, In our village we ourselves are the Government). It is not that all the decisions on establishing self-governance came easily. There are many instances when the village and the government came in serious conflict. Mendha Lekha has traveled a long way in establishing self-rule. Currently it is fixing the rates for forest produce in the Gram Sabha and engaged in open auction. It was reported that the action rate was much higher than the rate fixed by the forest Department. Mendha Lekha Gram Sabha has PAN card and VAT registration.

Mendha Lekha is an example of a remote village inhabited by Maria Gonds who have been governing their village based on tribal customary law and very well also adopted the modern management practices. It can be termed as an isolated example and the outcome can be credited to many external organizations like Vrikshmitra (Mohan Hirabai Hiralal), Kalpavriksha and local leadership of the young tribal Devaji Tofa. Mendha Lekha example may not have replicated widely but gives a clear indication that the tribal community can be governed by their traditional customary law and same time can integrate in the mainstream society.

In early part of 2015, the author had the privilege to attend a ‘Adivasi Sammelan’ in Kotda block of Udaipur district in Rajasthan. The ‘sammelan’ was organized by the tribal village associations. (ASTHA, Udaipur based NGO and partner organizations have promoted the Adivasi People’s Organisation.) It was told that about 150 villages of Udaipur and Dungarpur district have declared self-rule under PESA. In their assessment of self-rule, they revealed that there is satisfactory progress in the areas like (i) power to enforce prohibition and regulate the sale of intoxicants, (ii) approval of village development plans for implementation of schemes by the Gram Sabha, and (iii) issue of utilization certificate on the government programs by the Gram Sabha. Some progress has been achieved in the areas like (i) power to exercise control over money lending, (ii) ownership of minor forest produce, and (iii) consultation with the Gram Sabha before making land acquisition in schedule areas for development projects. In the areas where no progress has been made are related to (i) dispute and conflict resolution as per the tradition keeping in mind the principle of natural justice, (ii) auction of minor mineral and (iii) control of the local market.

The presentation by the tribal leaders on self-assessment of accomplishment of PESA created many thought process with regard to achievement of PESA in Gujarat where the author has been working for many years and launched many awareness drives, trained the PRI representatives under PESA through the support of Government of Gujarat and conducted and participated in many official and non-official consultations. Here, the effort has been to arrive at a sense, why the PESA implementation is not effective in
Gujarat. Rajasthan has enacted PESA rules in 2011 after prolonged consultations. In Gujarat there is a PESA guideline and no rules have been notified yet. However, in Gujarat many Acts have been harmonized looking into the PESA Act, 1996. The Gujarat Money Lenders Act, 2011 has provisions for approval from the Gram Sabha with regard to registration and renewal for money lending and rate of interest in the schedule area. The Gujarat Mines and Mineral (Development and Regulation) Act 1957 has issued a notification in August 2010 stating that lease for extraction of minor mineral in the PESA area, explicit sanction of the Gram Sabha is required – Ch.II, 4 (6). Direct interaction with PRI representatives in PESA area clearly reveals that neither there is any understanding on the harmonization of such Acts in favor of PESA, nor there is any interest for the implementation.

The Gujarat Minor Forest Produce Trade Nationalization Act, 1979 and the Gujarat State Forest Development Corporation Ltd. (Nigam) needs a special mention with regard to harmonization with PESA. It is well known that tribal people depend largely on the forest produce and transfer of management of some of the minor forest produce can contribute in strengthening tribal self-rule. It is learnt that the Forest Nigam fully controls the procurement, storage, value addition and marketing of the minor forest produce and there has been no official discussion on the transfer of management. The Halpatis and the Kotwalias who have in subsistence level of production, perhaps benefit a lot if the minor forest produce management and the forest land under community rights is developed by growing bamboo is left to the tribals. The Forest Nigam transfers certain amount of the profit from the sale of minor forest produce to the respective panchayats. The PRIs plead ignorant about the transfer of profit.

With regard to regulation and control over the production of traditional use of liquor the Government of Gujarat has issued permits to older tribal people. All the permits expired in March 31, 2015. A senior official reported that the Adivasis of Gujarat have converted to ‘Bhagats’ – a life style following the path of ‘sanskritisation’.

The question that needs to be asked is, whether the tribal community of Gujarat are fully/mostly mainstreamed and they do not need to practice their customary law in their local governance. How deep and wide is this realization. Is it a ‘sarkari articulation’ imposed over the people or it is the aspiration of tribal communities in Gujarat to get freed from the tribal tradition, culture and customs. There is a view that not only tribal welfare programs but also programs designed for ‘Adim jan Jati’ – Primitive Tribal Groups (PTG) are top-down programs with little emphasis on transfer of power to the tribals. To cite the argument on protection of Jarawas in Andaman Islands (Pandya and Majumdar, 2012) in pursuing their traditional way of life and need for insulation from the external world to stop the process of extinction, there is also a need to provide medical treatment at instances of outbreak of epidemic. Protection of tribal/indigenous culture and tradition is not in contradiction to adoption of modern living. Both can exist simultaneously. The provisions in PESA are in the direction of protection of tribal culture and customary law through self-governance and making available the
provisions of development programs of a democratic state. The over emphasis on the process of ‘bhagatisat’ (sanscritisation), mainstreaming without protection of traditional culture and customary law will lead to erosion of a tribal identity on the altar of development.

**Postscript:**

In January 2017, the government of Gujarat notified the PESA rules. The key point of the notification is as follows.

**Key points of the Gujarat PESA Rules**

1. Based on the recommendation of the Committee headed by Dilipsingh Bhuria, the parliament passed the PESA Act in 1996. Gujarat Panchayati Raj Act, 1993 was amended in 1998 to integrate the features of the PESA. However, Gujarat Govt. framed the PESA rules in 17 January 2017.

2. It maintained the spirit of PESA Act and that the customary law, social and religious practices and traditional management of community resources must be practiced in consonance with the rules and act of the government.

3. It invokes the power of the Gram Sabha to ratify all decisions – traditional habitation – with provision to conduct both habitation level Gram Sabha and Gram Panchayat level Gram Sabha aggregating all the habitation level Gram Sabhas to take decisions on issues like construction of road, watershed development, etc. The GP secretary has the responsibility to organize all the habitation level Gram Sabhas. **The Panchayat shall function under the general supervision, direction and control of the Gram Sabha.**

4. Gram Sabha has all the functions that is mentioned under Schedule – 1 of Gujarat PRI Act which is same as Schedule 11 of the Constitution (29 functions) – planning, budgeting, selection of beneficiary, take decisions on land acquisition as per the Land Acquisition and Rehabilitation Act, hold all government public program functionaries accountable including education, health, social security like pension, PDS, etc, plan and manage minor water bodies, preserve, protect and develop natural resources and environment, protect promote unity and harmony, etc.

5. It has created three committees to support the Gram Sabha – these Committees are: **Peace Committee, Resource Planning and Management Committee and Vigilance and Monitoring Committee.** All the committees need to have 10 members elected in the Gram Sabha.
**Peace Committee:** 33% women and minimum 50% from schedule tribes. The committee shall maintain healthy relationship with neighboring villages enquire in to practices that disturb peace, counter vices of anti-social elements including indecent behavior with women and resolve dispute amicably. At the Gram Sabha level a Peace and Security Corps is to be formed with shall function under the guidance of Peace Committee. The Corps shall have youth members in the age group of 18 to 30 years. The members of the team shall not use any force except informing the Peace Committee or assisting government authorities. This has to be done in the spirit of community traditions and the spirit of the relevant laws and rules of the country. While resolving dispute the Peace Committee shall take action as per the custom prevailing in the area but keeping in mind the principles of natural justice. It must listen to the views of all the people and both the parties. In case the proposal of the committee fails to get approval of the majority in the Gram Sabha, the decision of the Gram Sabha shall be accepted. The main objective of resolving any dispute shall be to eliminate the cause of the dispute and create an atmosphere of harmony in the village.

**Resource Planning and Management Committee (RPMC):** These committees have also 10 members elected from the Gram Sabha. Representatives from all the department full function as advisors to the RPMC. On the matters of regulation of mines and minerals Gram Sabha shall act on the advise of the RPMC. Gram Sabha may decide to quantity of local material such as stones, sand etc. to be used by the local residence. However, they can obtain it after getting a parawana as per Gujarat Minor Mineral Concession Rules, 2010. The District Mineral Foundation (DMF) created under DMF Rules 2016 has the power to collect all the revenue from the lease in the schedule area. (The power of Gram Sabha on collection of revenue from lease has been given to DMF which is against the principles of PESA Act). However there is a provision to furnish annual report of the work undertaken by DMF in the tribal area to the Gram Sabha.

**Vigilance and Monitoring Committee (VMC):** VMC shall conduct the social audit and monitoring of all development activities. Ensure information about the work and budget to be displayed in local language. The term of the committee shall be two and half years and eligible for re-election. The committee shall be of 11 members from among including the Sarpanch of the Gram Sabha.

**Other Functions of Gram Sabha:**

1. Gram Sabha shall ensure to safeguard natural resources in the scheduled area over which it enjoys traditional rights including water, forest, land and minerals as per the local tradition and the spirit of the law of the government

2. Prevent land alienation and regulate land acquisition as per the provisions of Rights to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
3. Manage the village Haat including physical facilities, information about the prices, check inflow and sale of harmful objects, check that the weight, measurement and payment are genuine and there no exploitation done, check unfair practices including cheating and misinformation regarding prices, discourage gambling, betting and cock-fighting like practices.

4. For management of minor forest produce the rules invoke the presence of Gujarat State Forest Development Corporation for fixing the prices and sharing the profit. (This is also under mines the principles of PESA. In Mendhalekha GP in Gadhchiroli district, the Gram Sabha has been directly auctioning all the minor forest produced and sharing the profits with the forest department.

5. There is provision for regulating money landing in terms of rate of interest. In case of any dispute the peace committee is authorized to redress the issue.

6. The Gram Sabha shall work to take up measures against de-addiction and curb superstition and sorcery.