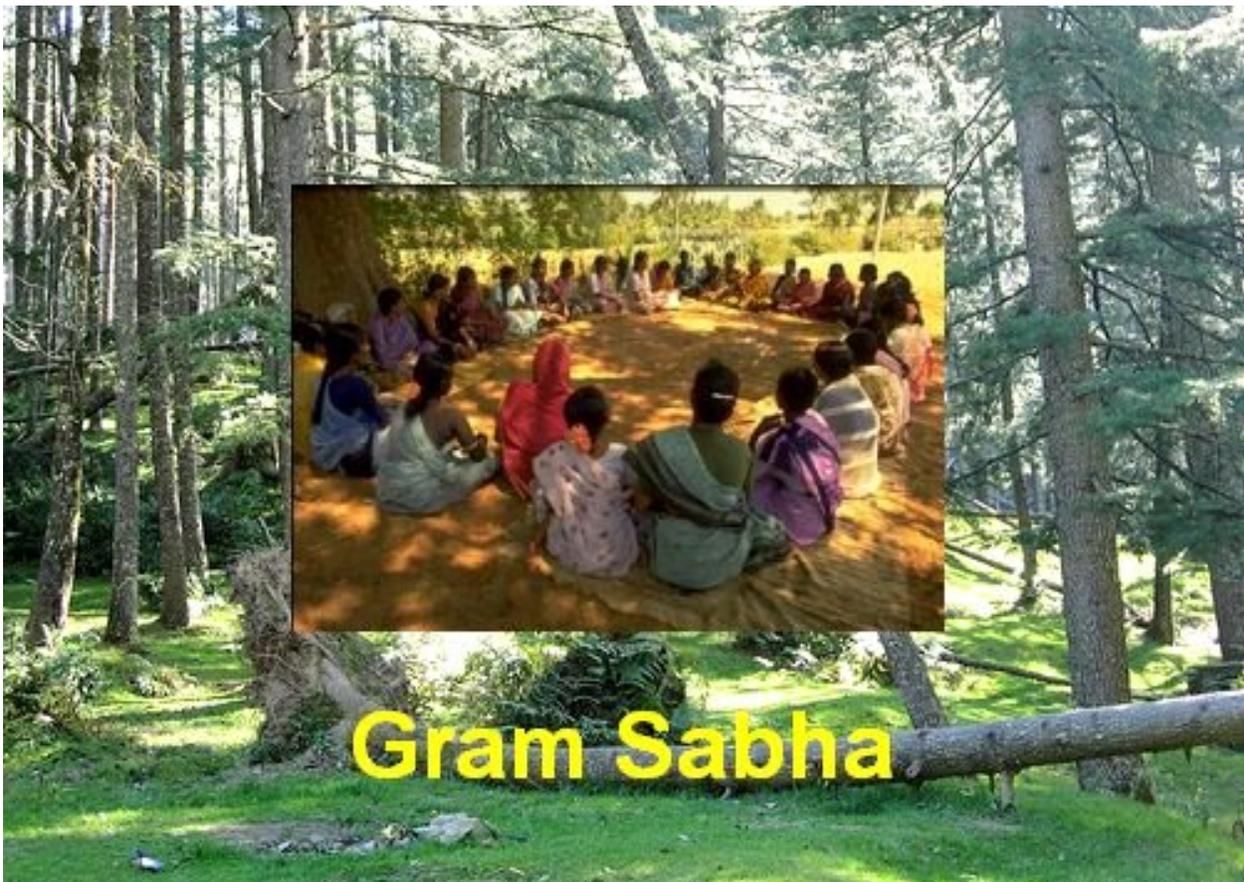


Panchayat (Extension to Scheduled Areas)
Act, 1996

(PESA Act, 1996)



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BACKGROUND



“Indigenous people around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated.”
United Nations Permanent Forum on Indigenous Issues, October 2006

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. – Dr Manmohan Singh

In last six decades India has achieved significant milestones in the areas of economic growth, cultural assimilation and global political interests. However, within the purview of development the tribal affairs have been shoved under the shelf to serve the vested interest of some. The poor tribals have been made to feel like aliens in their own indigenous lands.

Over the decades the process of development has frequently led to a progressive erosion of their traditional rights over their land resources including the forests. This can be aptly ascribed to the lacunae in the laws, faulty implementation, and rapacious exploitation by the unscrupulous traders, money-lenders, etc.

TRIBAL FOREST RIGHTS IN THE HISTORY



Tribals and forest are synonymous and one cannot be separated from the other. They have emotional, psychological, and cultural attachments with the forest and have always lived in the forest.

Before the British came in, the ruling princes had rights over the forest and in far-flung areas. The tribals lived on forest produce and also by cultivating parts of the forest area. Over the centuries, the tribals were driven into the hills and forests by people who came from the North and took possession of the fertile lands in the river valleys.

The Englishmen brought in the Indian Forest Act 1927, taking away the inherent rights of the tribal people. With one legislative stroke, the tribals became trespassers on their own land and became victims of externally motivated systems of forest management that directly violated various facets of their economic and cultural survival. The final act of atrocity on a largely unsuspecting population was the imposition of an alien judicial system and "law and order" machinery that subjugated them, further compounding their vulnerability and subservience.

After independence these rights got transferred to state governments. In the process the inherent rights of the tribals and forest-dwellers got restricted to nistari rights – the right to

free grazing and fuel wood – while rights over timber and non-timber produce remained with the state government. Over the years, the unholy nexus between the forest contractors and representatives of the government, for the incentive of getting tribal votes, encouraged large scale felling of forests.

Consequently, in 1980 by enacting the Forest Conservation Act, the Government of India took away the rights of state governments to convert forest land for non-forest use. The state government now had to seek permission from the Government of India for any development work within the forest area. Thus far the term “forest” was as defined in the Indian Forest Act 1927. In 1996, however, the Supreme Court enlarged the definition of forest to cover even those areas which were notified as village forests on revenue land.

The forests cannot be conserved by forest employees alone and the real stakeholders – the forest dwellers – have to be involved in the conservation and preservation of forests, including wildlife. The forest should not be seen merely as a source of revenue for the state but as a source of livelihood for the forest dwellers. In fact, Forest Acts in any format must aim to empower the forest dwellers and make them primary conservators and protectors, rather than making bureaucracy lord of the jungles.

Forests are not just for Revenue

The forest should not be seen merely as a source of revenue for the state but as a source of livelihood for the forest dwellers. Only tribals can really protect forests; not the forest officials.

It also needs to be pointed out that tribal areas represent the last resources sumps on the planet earth, simply because tribal knowledge systems ensure sustainable livelihoods, and tribal religion and outlook engenders the survival of all living beings, through holistic and ecological sound principals of belief.

TRIBAL POPULATION IN INDIA

It is estimated that Adivasis constitute 8.2% of the total population of the India and yet the tribals are among the most marginalized people in Indian society. They have a rich and distinct identity and culture. Each of the tribal communities has its territorial identification. Adivasi people live in close proximity to nature and are separated from mainstream society. Women in tribal communities enjoy equal status with men.

There are three basic groups of Adivasis in India:

1. Hill tribe groups; have access to land, assets, forest produce and form part of Gram-Shabas;
2. Semi-nomadic plain groups; live in the foothills and hunt; depend on others/landowners;
3. Nomadic groups; often depend on selling handicrafts, begging; landless labourers.

TRIBAL POPULATION

Tribals constitute 8.2% of the total population of the India and yet they are among the most marginalized people in Indian society.

Adivasi were the original inhabitants of India living in the plains but with various invasions they were driven to the forests and mountains. As a result their livelihood depended mostly on the collection of forest produce, hunting and cultivation in difficult hill terrains. Over centuries they have become increasingly disadvantaged - economically, socially and politically - and vulnerable to marginalization and exploitation.

- More than 40.1% of the tribals are displaced throughout India.
- 45.86% of the Scheduled Tribe (STs) population lives below the poverty line (BPL) in rural areas alone and at national level this rises to 55.2%.

- 63.71% of Adivasis are classified as living in extreme poverty conditions with no access to land, poor cultivation and poor health service provision, resulting high incidence of communicable and non-communicable diseases. They have few opportunities for income generation and work as wage labour and are extremely vulnerable to economic migration.
- Over 63.5% of the tribal households do not have access to electricity.
- About 53.1% of the tribal households do not have an accessible source of safe drinking water
- Almost 83% of the tribal population do not have access to a sanitation facility
- Average Monthly Consumption Expenditure is INR 388 (equivalent to \$8)

In post-independent India a number of community based organizations (CBOs) of Adivasi and local and international non-governmental organizations (NGOs) have become active in the field of development of the Adivasis in the country.

Major Tribes

States	Tribes
MP and Chhattisgarh	Bhil, Birhor, Damar, Gond, Kharia, Majhi, Munda, Oraon, Parahi, etc.
Himachal Pradesh	Gaddi, Gujjar, Lahuala, Swangla, etc.
Rajasthan	Bhil, Damar, Garasta, Meena, Salariya, etc.

TRIBAL STATISTICS

TRIBAL POPULATION

State wise ST % Population under the Fifth Scheduled

State	STs as % of State Population	No of ST Communities
Chhattisgarh	31.76	42
Jharkhand	26.30	32
Orissa	22.13	62
Madhya Pradesh	20.27	46
Gujrat	14.76	32
Rajasthan	12.56	12
Maharashtra	8.85	47
Andhra Pradesh	6.59	35
Himachal Pradesh	4.02	10
	16.36 (Average)	318

CONCENTRATION OF ST POPULATION ACROSS DISTRICTS

S No	% Population	No of Districts
1	NIL	--
2	Less than 1 %	173
3	Between 1 – 5 %	106
4	Between 5 – 20 %	124
5	Between 20 – 35 %	42
6	Between 35 – 50 %	23
7	Above 50 %	75
	Total	543

STATE WISE NO. OF DISTRICTS WITH MORE THAN 50% ST POPULATION

S No	State/UT	No of Districts
1	North East States	41
2	Orissa	7
3	Chhattisgarh	5
4	Madhya Pradesh	5
5	Gujrat	4
6	Jharkhand	3
7	Himachal Pradesh	2
8	Jammu & Kashmir	2
9	Rajasthan	2
10	Andman & Nicobar	1
11	Dadra & Nagar	1
12	Lakshwadeep	1
13	Maharashtra	1
	All India	75

STATE/UT WISE DISTRIBUTION OF ST POPULATION

S No	State/UT	ST as % of Total Population
1	Madhya Pradesh	14.51
2	Maharashtra	10.17
3	Orissa	9.66
4	Gujrat	8.87
5	Rajasthan	8.87
6	Jharkhand	8.40
7	Chhattisgarh	7.85
8	Andhra Pradesh	5.96
9	West Bengal	5.23
10	Karnataka	4.11
11	Assam	3.92
12	Meghalaya	2.36
	Himachal Pradesh	0.29
	Uttarakhand	0.30

CONSTITUTION AND THE TRIBALS

FIFTH & SIXTH SCHEDULES

In India most of the tribes are collectively identified under Article 342 (1&2) as Scheduled Tribes and right to self determination guaranteed by Part X : The Scheduled and Tribal Areas – Article 244: Administration of Scheduled Areas and Tribal Areas.

(1). The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State (other than the states of Assam, Meghalaya, Tripura and Mizoram).

(2). The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these three districts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

The Indian Constitution is supposed to protect tribal interests, especially tribal autonomy and their rights over land, through Fifth and Sixth Schedules. Scheduled Areas of Article 244(1) are notified as per the Fifth Schedule and Tribal Areas of Article 244(2) are notified as per the Sixth Schedule.

Sixth Schedule contains provisions as to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram. This law gives enormous freedoms to the autonomous regions and districts in terms of legislative and executive power. The law notes that each autonomous region shall have its own autonomous Regional Council and every autonomous district its own autonomous District Council.

The Regional Council or District Council have the power to constitute village Councils or courts for the trial of suits and cases between the parties all of whom belong to scheduled tribes within such areas. The District Councils, additionally, are given the power to establish, manage and construct primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district, which gives them a stake also in many other fields, besides administration. The Regional Councils and District Councils are also endowed with the power to assess and collect revenues.

States such as Andhra Pradesh and Madhya Pradesh have often demanded their tribal regions be notified in the Sixth Schedule so that get more autonomous power.

The Fifth Schedule envisages notification of tribal-dominated areas as Scheduled Areas and the formation of a Tribal Advisory Council (TAC) at the State level. Since these Scheduled Areas are supposed to enjoy autonomy protected by the Constitution, the laws passed by parliament and the State legislatures do not automatically apply to them. Hence, the Fifth Schedule defines Governors' powers to adapt laws to these areas. It provides for making regulations by the State Government for the Scheduled Areas having the force of law. It also allows the Union Government to give directions to a State regarding the administration of Scheduled Areas.



These Schedules have had little impact on the ground. The Tribal Advisory Councils are either non-existent in many States or are defunct and dysfunctional. Worse still, the process of scheduling of tribal areas itself is not yet complete even after decades. It started in the fifties and soon the bureaucracy at the State level, acting at the behest of non-tribal landed gentry, gave it up. Having no inclination to protect the land rights of tribals, they saw no reason for continuing it. The spread of Naxalites armed struggle to the tribal areas compelled the ruling class leaders to initiate some reform measures in tribal areas.

Indira Gandhi introduced what is called as Tribal Sub-Plan in the planning process, earmarking a portion of funds for tribal development. Only to ensure their share of the Central Plan allocations, the States started the notification of tribal areas again. However, the money seldom reached the tribals.

When Rajiv Gandhi's successors passed 73rd and 74th Amendments to the Constitution to enact Panchayat and Nagarpalika Bills, they simply forgot that these do not automatically become applicable to Tribal and Scheduled Areas and hence failed to pass an appropriate law through the parliament.

Bhuria Committee

The Rao government appointed a committee headed by Mr. Dileep Singh Bhuria, MP, in June 1994, to work out the details as to how structures similar to Panchayati Raj Institutions can take shape in Tribal Areas and Scheduled Areas and to define their powers. The Committee submitted its report in January 1995.

The Bhuria Committee recommended a three-tier structure of self-governance in the tribal areas: (1) Gram Sabha - Every "habitation community" to have a Gram Sabha which will

exercise command over natural resources, resolve disputes and manage institutions under it like schools and cooperatives; (2) Gram Panchayat - Elected body of representatives of each Gram Sabha, also to function as an appellate authority for unresolved disputes at lower level; and (3) A block or taluka level body as the next higher level.

Panchayat (Extension to Scheduled Areas) Act (or PESA), 1996

Village level democracy became a real prospect for India in 1992 with the 73rd amendment to the Constitution, which mandated that resources, responsibility and decision making be passed on from central government to the lowest unit of the governance, the Gram Sabha or the Village Assembly. A three tier structure of local self government was envisaged under this amendment.

Since the laws do not automatically cover the scheduled areas, the PESA Act was in acted on 24 December 1996 to enable Tribal Self Rule in these areas. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas. Most of the North eastern states under Sixth Schedule Areas (where autonomous councils exist) are not covered by PESA, as these states have their own Autonomous councils for governance. The nine states with Fifth Schedule areas are:



Andhra Pradesh	Chhattisgarh	Gujarat
Himachal Pradesh	Jharkhand	Maharashtra
Madhya Pradesh	Orissa	Rajasthan.

The fundamental spirit of the Panchayat Extension Act for tribal areas under 5th Schedule is that it devolves power and authority to Gram Sabha and Panchayats rather than delegation; hence it paves way for participatory democracy. The provision under constitution and the composition under this act call for every legislation on the Panchayat in 5th Schedule area be in conformity with the customary law, social and religious practices and traditional management practices of the community resources.

It also directs the state government to endow powers and authority to make Gram Sabha and Panchayats function as Institutions of Local Self Governance, specifically on matters of enforcing prohibition of sale and consumption of intoxicant; ownership of minor forest produce; power to prevent alienation of land and restoration of unlawfully alienated land, management of village markets, control over money lending, etc.

PESA Act, 1996

PESA is meant to recognize, empower and promote the social, economic, cultural and political way of life of the Scheduled Tribes (adivasis).

PESA also empowered gram sabha of the Scheduled Areas to approve plans, programmes for social and economic development, identify beneficiaries under poverty alleviation

programmes, certify utilization of funds by gram Panchayats, protect natural resources, including minor forest produce and be consulted prior to land acquisition.

PESA make sure that each tier of the Local Governance is independent and Panchayats at higher level should not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha. Further, it also calls for creating the appropriate levels of Panchayats similar to 6th Schedule area, where the Administrative boundaries are Autonomous enough for self-rule.

All the states with scheduled areas within their geographical boundaries were mandated to amend their existing Panchayati Raj acts incorporating provisions of PESA within a year, that is, by 24 December 1997.

Provisions under PESA include the following.

1. Gram sabha at the para, majra and tola levels
2. Gram sabha to protect the traditions, beliefs and culture of the tribal communities
3. Local disputes to be resolved by the gram sabha
4. Gram sabha to manage and protect common properties based on their traditional systems of management and protection
5. The administration to seek permission from the gram sabha in case of land acquisition
6. Gram sabha to have the rights over minor forest produce; powers to restore land to the tribals; and control over money-lending to tribals, tribal welfare activities by social organizations and local plans and sub-plans for the development of tribal areas and communities
7. Gram sabha to have the control over local markets and melas
8. Gram sabha to have rights to control the distillation, prohibition and manufacture of liquor.
9. District panchayats to have rights and powers similar to the district panchayats falling under Sixth Schedule.

PESA Act, 1996
The Panchayats Extension to Scheduled Areas (PESA) Act, 1996, gives special powers to the Gram Sabhas in Scheduled Areas especially for the management of natural resources.

The Fifth Schedule suggests that the Governor and the Tribes Advisory Council (TAC) should protect/promote the welfare and advancement of the Scheduled Tribes.

It follows that the correct or harmonious interpretation of PESA would be the recognition of the traditional tribal political institutions of self governance. Such a conclusion also follows since the PESA must be read in conjunction with the Fifth Schedule, which deals with the Scheduled Tribes of the Fifth Schedule Areas and given the fact that PESA has as its backdrop the recommendations of the Bhuria Committee, which was instrumental in formulating the PESA.

PESA Act, 1996
The main rationale behind the Act is to preserve the tribal population from exploitation with an active involvement of the Gram Sabha.

SOME LIMITING ISSUES

PESA can be only as effective as the PRIs, and that in turn depends on the capability of the elected representatives to deliver. Although there is a scheme of Panchayat Development and Training (PD&T) sponsored by the Central government, it needs further augmentation both in terms of funds and the training quality. However, for PESA Gram Sabhas are the units at the ground level which in reality remain subordinate to Gram Panchayats, Besides, lower level of awareness and education among the tribals also come on the way of raising assertive voices.

A limitation of the PESA law is that it is applicable only to those areas which are legally regarded as Scheduled Areas. A significant number of tribals living outside the scheduled areas are not covered by this legislation.

While the political decentralization has been largely successful, with elections held regularly and with ample participation of people, there is only superficial administrative and fiscal empowerment that still remains with the State Governments.



Panchayats have not been given adequate responsibilities to levy and collect taxes, fees, duties or tolls. This severely limits their autonomy. Besides, recommendations of State Finance Commissions have been either accepted partially or implemented half-heartedly. Moreover, recommendations of State Finance Commissions are only selectively implemented leaving the Panchayats toothless.

The State Election Commissions (SECs) do not have same freedom from State to State. It would be better to empower SECs so that they can freely deal with all matter relating to Panchayat elections: delimitation of constituencies, rotation of reserved seats in Panchayats, finalization of electoral rolls, etc.

Gram Sabhas are the primary instrument to implement PESA effectively by giving control to the tribals to take care of their affairs almost autonomously. However, in reality other state legislatures and extraneous forces, such as forest department, subordinate them. It defeats the very purpose of PESA.

PESA – The Myth and the Reality

Technically, when the Act refers to extending the provisions of Part IX of the Constitution to the fifth schedule areas; politically, it gives radical governance powers to the tribal community and recognizes its traditional community rights over local natural resources. It not only accepts the validity of “customary law, social and religious practices, and traditional management practices of community resources”, but also directs the state governments not to make any law which is inconsistent with these. Accepting a clear-cut role for the

community, it gives wide-ranging powers to Gram Sabhas, which had hitherto been denied to them by the lawmakers of the country.

The ground reality, however, is still quite different and PESA has merely been reduced to a paper tiger. The two fundamental responsible factors are the mindset of the government functionaries who tribal people as an inferior species who need to be told what is good for them and the other is the existing state government laws and provisions that negate the PESA Act.



State governments have discovered a clever way to bypass PESA provisions to exploit the natural resources of the tribal areas:

The parliament the PESA Act for rural areas, but a similar legislation for urban scheduled areas was never debated. State governments are taking advantage of Parliament's lapse to give speedy clearances to mining and industries in tribal areas. Their modus operandi is simple: they upgrade rural panchayats in scheduled areas to urban panchayats to bypass PESA which mandates village council's approval for such projects.

In the past few years, more than 600 village panchayats, many of them in scheduled areas, have been converted into urban local bodies, and these areas have major industrial investment proposals. High courts' in different states have given contradicting verdicts and appeals are pending in the Supreme Court.

GROUND REALITIES



Writer, Ramachandra Guha, after visiting the Dantewada district of CG commented on the plight of the tribals: They find themselves sandwiched between the Maoists on one side who can't give up their armed struggle and the government on the other, that can not put the interests of a vulnerable minority — the adivasis — ahead of those with more money and political power.

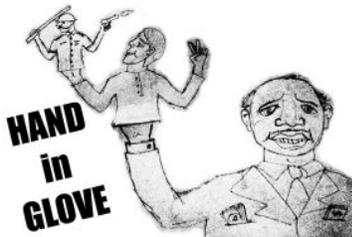
This accurately sums up the ground reality of tribal areas infected by the Maoists.

A 47-page report entitled "PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts", authored by Ajay Dandekar and Chitragada Choudhury was published few months ago. It gave an independent assessment of the functioning of the PESA Act. The Ministry of Panchayati Raj had commissioned this study to the Institute of Rural Management, Anand (IRMA). It categorically blamed government apathy, more than anything else, for the improper administration of the provisions of PESA in many tribal districts and argues that government apathy has to a large measure provided an impetus to the activities of Naxalites.

It also highlighted several instances where state governments have diluted the powers of PESA in the wording of legislation and the rules governing the implementation of the law. It points out that barring Madhya Pradesh and Chhattisgarh, most states have enacted laws that provide the bulk of the powers to the Gram Panchayat, and not the Gram Sabha which is in stark violation of Section 4(n) of PESA — a Gram Sabha is a body of persons registered in the electoral rolls of a village or a group of villages within the area of the Panchayat.

Bureaucrats and Corporates Think Paisa, Not PESA!

Anthropologist, Felix Padel, and the activist, Samarendra Das, in *Out of this Earth* provide a comprehensive analysis of the social and environmental impacts of the mining boom in Orissa. The authors show how companies split tribal communities by bribes and coercion, such that a division emerges between 'accepters' and 'refusers'. They document the extensive collusion, between politicians/bureaucrats and the private companies, which has displaced scores of tribals from their land they inhabited for ages.



The autonomous and non-violent resistance of tribals to destructive mining has often been misrepresented by the State, corporate interests, and even by the media at times to label it as a "Maoist threat". Then this label is used "to crush all kinds of spontaneous opposition of tribals to be displaced" leaving them displaced and left to the mercy of fate.

The IRMA study pointed to the apathy of governors despite the fact that PESA Act gives them limitless power to enforce the law and protect interests of the marginalized tribals. Tribal activists informed that "Not even in a single instance, have the Governors responded to their petitions for interventions in threatening crises, such as deepening clashes over land, mining or police excesses".

The study also found widespread transfer of tribal lands into non-tribal hands through fraud and forcible occupation. Despite a long-standing promise to repeal or amend the outdated Land Acquisition Act of 1894, it is still being used, or misused, to acquire land owned by households and communities and hand it over to the corporate sector. "When it comes to acquiring mineral resources for industry the stakes are loaded against the functioning of the PESA", notes the study.

PESA Or Paisa?

"Is the government meant for the people or the powerful?"

Mahangu Madiya, Bastar, CG

(protesting state govt. efforts to acquire his farmland for Tata Steel)

In one village in Orissa, the researchers found that a large police station had recently been constructed, whereas in the past five decades, the state government had not bothered to build a hospital or public health centre. The reason for this bias was immediately obvious — in the shape of a new aluminium factory that had come up near the village. "Do our people need better police facilities or better health care?" asked the village headman. "What is the administration's priority?" he continued, before supplying this answer: "This is being done only because the company wants police stations, which can beat us if we ever protest against land acquisition."

Invasion by Industry

Apart from the mega projects, industry is being liberally allowed to wreck havoc with the living conditions of the tribals under the liberalization regime.

Despite various Forest Acts affirming that the forest dwellers have the first right to forest produce, the forest departments themselves have started handing over the forest wealth to the industry. In the vast tribal areas of Andhra, MP and Orissa, the tribals are primarily dependent on the collection and selling of the non-timber forest produce (NTFP).

In Orissa, industry and bureaucracy have colluded to circumvent the restrictions on leasing forest lands to the private industry illegally without obtaining central approval. Instead of land, the forest produce is being leased out to the industry.

Earlier, the Orissa Forest Development Corporation and the Tribal Development Corporation had exclusive rights for a number of NTFPs. But under liberalization wave since 1990, individual companies (for example, Utkal Forest Products) have been given collection rights for 29 NTFPs for 10 years. Various paper industries have been engaged, under the guise of 'labour contractors', for working bamboo areas. They have cornered bamboo collection rights in several forest divisions. In Uttarakhand there have been reports of forest depots selling bamboos to companies at highly subsidized rates.



The forest department, by contrast, comes down with bestial fury against the tribal organizations. In Rayagada, a women's group formed a society of 50-60 tribal women to make brooms and sell them for a better price through this society. The Orissa forest department, saying that the society was not licensed, promptly confiscated their brooms and prosecuted the women!

These attempts to rob the tribals of their resources are criminal, especially when it occurs in places like Kalahandi and Koraput districts where starvation deaths among tribals are legendary. In 1993, an estimated 7000 tribal children died of malnutrition in Amravati district of Maharashtra. Infant mortality among some tribes in Orissa and AP are above 150 per thousand.

In Andhra Pradesh mining leases were issued (to the Orient Cements in Adilabad district) without the consent of the Gram Sabha and proposals were made in Chintapalli for bauxite mining.

WHAT SHOULD BE DONE

The real basis of democracy should be the entire village community, consisting of all village units. The village for this purpose is to be defined not as a revenue village as mentioned in the government records but as a living reality of people spontaneously thinking of themselves as one unit, of people working and living together.

There are two different ministries in the Union Government, namely, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs that have overlapping influence on implementation of PESA – and they virtually function in isolation. This issue needs critical attention at the Central government level.

The letter and spirit of the ‘Samata Judgement’ should be enforced in all acquisition of tribal land for private companies.

Land for Land must be a fundamental requirement for acquisition of tribal lands.

For speedy disposal of tribal land related cases, the B.D Sharma Committee Report recommended issuing notification of a date, so that 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 or body, shall stand transferred to the Gram Sabha in whose jurisdiction the land is situated.

Along the lines of the NREGA social audit rules in Andhra Pradesh, social audit rules should be issued for all government programs in Schedule Five areas. On the lines of the Citizen’s Panel for NREGA constituted last year by the Ministry of Rural Development, a National Citizen’s Panel for PESA should be constituted. 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.

There is a complete absence of a functioning grievance redressal mechanism to address a routine violation of rights of villagers from the tribal community. This furthers the community’s sense of alienation. It is widely felt that functionaries of the state and other powerful interests have no fear of any punitive action for their acts against the tribals. Hence, some punitive mechanism should be constituted.

The full-fledged implementation of PESA will give Rs 50,000 crore to tribal communities to develop themselves. Nothing would deal a bigger blow to the Maoists than participative development by, for and of the tribal communities. Note, of the 76 districts highly infected by Maoists, 32 are PESA districts.

GOVERNMENT INITIATIVES

The State Government should incorporate provisions in the Panchayat Extension to Scheduled Areas Act (PESA) that would enable proper resettlement of tribals and prevent future displacements.

Union Ministry of Tribal Affairs had been initiated a separate scheme for promoting education of ST girls at primary levels in areas that had low female literacy level. It also provided cash incentives for sending girl children to residential schools. Special provisions were made for the empowering STs that included lending funds and providing rights to Minor Forest Produce.

The Biodiversity Act has been enacted to protect the traditional knowledge of the tribals with regard to herbal/biological products.

In the "development offensive" against the Maoists, the Panchayat's (Extension to Scheduled Areas) Act (PESA) is the crucial weapon, but the states affected by leftwing extremism are doing precious little to implement this law – so little that an exasperated centre has shot off one more letter to these states asking them to comply with the PESA rules and regulations.

- Activate Gram Sabhas in a Mission Mode and enable it to exercise its powers & functions including in relation to planning & implementation of Central/State schemes, grant of UCs and dispute resolution.
- Ensure that complete information about the land to be acquired and impact of the proposed project, is placed before the Gram Sabha and its recommendations are generally followed.
- Mandate SEC to delimit villages.
- Incorporate definition of MFP, as provided in the Forest Rights Act, 2005, in all laws and rules. Undertake management of MFP with the consent of the Gram Sabha and in case MFP is collected by an outside agency, the net income should go to the people.
- Enable the Gram Sabha, particularly women, to take decisions regarding the opening and continuance of liquor shops, sale of intoxicants, etc.

ROLE OF NGOs & CIVIL SOCIETY ORGANIZATIONS

Organizations working with PRIs are most suitably placed to take up the matter related to PESA. They need to provide voice to the grievances of poor tribals and make them aware of their rights given by the PESA Act. Strengthening PRIs is a pre-requisite for success of PESA. There is an astounding lack of awareness that Gram Sabha is the governing body and that it has jurisdiction over the natural resources. This is an ideal area for intervention.

A major hurdle in proper implementation of PESA is the vested interests of corporate houses and their collusion with bureaucrats. Tribals are most defenseless when they descend like predators armed with state and money power. Watchful eyes of civil society can play a major role in this area.

Pointing flawed laws of state governments and their interference in PESA implementation is another initiative civil society can undertake.

Finally, an awareness campaign that proper implementation of PESA is the best counter of Naxals armed struggle will go a long way in bringing peace in the so called "Red Corridor" of the country.

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