



**PESA IMPLEMENTATION – SOME ESSENTIAL PREREQUISITES AND
SUGGESTIONS FOR THE STATE OF GUJARAT**

DRAFT REPORT

**By
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1. Introduction:

Scheduled areas in India are inhabited by the tribal population who have been managing their natural resources and governing their social, economic and political life through a well- knit system of ancient customs and practices. However, in the wake of modernisation these age old institutions of self governance are fast becoming extinct¹. It is a challenge to usher the tribals in the mainstream of development efforts without disturbing or destroying their cultural identity and socio- economic milieu². To achieve this objective Bhuria Committee was constituted 1994 to examine various dimensions of self rule for tribals, the constitutional requirements and to make recommendations for extending the provisions of the Constitution 73rd (Amendment) Act, 1992 to the Scheduled Areas. Following the recommendations of the committee, the Parliament extended the provisions of 73rd Amendment Act to the Scheduled Areas in the then eight states (now nine states) by passing Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter PESA).

1.1 Devolution of Powers under PESA:

PESA legally recognizes the right of tribal communities to govern themselves through their own systems of self-government and also acknowledges their traditional rights over natural resources.

In pursuance of this objective, PESA empowers Gram Sabhas (village assemblies) to play a key role in approving development plans, controlling all social sectors – including the processes and personnel who implement policies, exercising control over minor (non-timber) forest resources, minor water bodies and minor minerals, managing local markets, preventing land alienation and regulating intoxicants among other things.³ Box below highlights the devolution of powers on PRIs in PESA.

1) Mandatory Powers of Gram Sabha

- a. Management of community resources
- b. Approve all plans/projects
- c. Identification of beneficiaries

¹ Self Governance for Tribals, MoRD- UNDP Sub Program on People's Empowerment through Panchayati Raj Institutions in Schedules V Areas and Studies on Law Affecting the Poor, Singh S.K. (ed.), Vol. IV, NIRD.

² Ibid.

³Section 4, Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996.



d. Issue certificate of utilization of funds

3) Discretionary Powers to Gram Sabha or the Panchayat at appropriate level

- e. Prior mandatory recommendation for acquisition of land and rehabilitation and reconstruction in scheduled areas.
- f. Prior mandatory recommendation for grant of prospective license or lease for mining minor minerals.
- g. Prior mandatory recommendation for grant of concession for exploitation of minor minerals by auction

4) Mandatory Powers to Panchayat at appropriate level

- h. Planning and management of minor water bodies.

5) Powers to Gram Sabha and Panchayat at appropriate level

- i. Ownership of minor forest produce
- j. Control over money lending
- k. Manage and regulate village markets
- l. Control over manufacture, sale and consumption of intoxicants, and
- m. Prevent land alienation and restore alienated lands
- n. Control over institutions and functionaries in all social sectors
- o. To control local plans and resources for such plans including tribal sub plans

1.2 Adoption of PESA by the State of Gujarat:

State governments were required to amend their respective Panchayat Raj Acts within a year and not to make any law that would be inconsistent with the mandate of PESA. The State of Orissa amended its Panchayati Raj Legislations in 1998 to incorporate the provisions of PESA within the Gujarat Panchayat Act, 1993 (as amended in 1997), which largely constitutes the Panchayati Raj framework of the State. However, the manner in which PESA provisions have been incorporated in Panchayati Raj framework in Gujarat, have been at variance with the letter and spirit of PESA. Besides, parallel provisions exist in other state laws governing the subject matters under PESA, which do not distinguish between a Scheduled Area and a non Scheduled Area. Finally, since the focus nationally is on reviewing the existing approaches to natural resource management in Scheduled Areas and to create an ideal framework for forest and Scheduled Area governance and also various key legislations on forest tribal interface such as new the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, have been enacted, therefore, the PESA framework in Gujarat also needs to be updated in the light of national and global developments. With this backdrop, this report presents an analysis of the current status of PESA implementation in the State of Gujarat and our



suggestions and recommendation on effective devolution of powers on each of the subject matters of PESA.

2. Structure and Function of Gram Sabha

2.1 Panchayat law and customary law, social and religious practices and traditional management of community resources

- PESA mandates that the state Panchayat Act must be made to ensure that they are in consonance with customary law, social and religious practices and traditional management practices of community resources [**Section 4(a)**]
 - Is there a clear understanding of customary law in scheduled areas? Have they been documented? If not they need to be done as early as possible and clear provision to this effect need to be added in state Panchayat law in a formulation as below:
 - Are the social and religious practices prohibited in any manner in scheduled areas? Are they required to be documented? If yes, then a clear provision to this effect is required in the respective Panchayat law. Two clear examples could be thought of in this regard: a) use of intoxicants b) hunting. While one has been inserted in the PESA, the other is missing (although covered in FRA) Further, hunting is prohibited⁴ as per provisions of the Wildlife (Protection) Act, 1972 with certain exceptions⁵ that are provided within the act. A sample formulation is pasted below which can be used by State Panchayat law.
 - What are the traditional management practices of community resources? And what constitute community resources? A clear provision to document these in the Panchayat law. Further a clear definition (perhaps an inclusive definition of what includes community resource is required). Two sample formulations are given below:
- The Gujarat Panchayats Act, 1993 as amended in 1998⁶ mandates that “the Gram Sabha shall endeavour to safeguard and preserve the traditions and customs of the inhabitants of the village, their cultural identity, community resources and the customary mode of dispute resolution.”⁷ However, it has not been mentioned in the Act as well as any of the Rules pursuant to it, as to what procedure to be followed to bring about the protection of these traditions and customs.
- Further, it is noticeable that while the Central Act deems every Gram Sabha to be competent to safeguard and preserve the traditional and customary practices and cultural identity, in the 1998 Act the word ‘competent’ has been omitted.

⁴ Section 9 Wildlife (Protection) Act, 1972

⁵ Section 11 Wildlife (Protection) Act, 1972

⁶ Hereinafter referred to as “GPA”

⁷ Schedule IV (2) (3) (a) vide the Gujarat Act No. 5 of 1998 [20.12.1997]



To this end the Following provisions needs to be included in the GPA:

Section 4(3) (a), GPA

Substitute the word “endeavour” with “be competent”.

Insert sub-clause (aa) after Section 4 (3) (a) in GPA

“(aa) The Gram Sabha shall document the customary law, social and religious practices and traditional management of community resources in their respective jurisdiction and such customary law shall have precedence over other practices as long as they are within the constitutional mandate on similar practice. Such documentation shall be carried out with the aid of State Tribes Research Institute or any specialized authority, institute, institution working in the field of tribal affairs within a period of two years of coming into effect of this provision with the aid and assistance of the State government as well.

Insert Explanation after Section 4 (3) (aa) GPA

Explanation: “Community resources” means and include common lands such as grazing lands, gothans, khalihans, burial grounds, skinning grounds, cattle pounds, thrashing grounds and other such areas of common usage; water commons such as ponds, lakes, water bodies, wetlands; and forest resources such as panchayat forests, village forests, adjoining reserved, protected forests and such traditional forests by whatever name called.”

2.2 Definition of Village and its Gram Sabha:

- Central PESA states *“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”*[Section 4(b)]

The definition of village has a generic tone of **“ordinarily”** consisting of habitation or group of habitation or a hamlet or a group of hamlet as if there is a possibility of not ordinarily too! The fact has also been that most state legislations while copying the Central PESA do not delineate the next legal or operational steps of reconstituting the village as per PESA. The definition of village should be more definitive with a “shall” clause deleting “ordinarily” to give a clear message to the states in the Central PESA.

2.2.1 Definition of village in Gujarat: Legal Issues

- The GPA states that: word "village" shall have the meaning assigned to it in Part IX of the Constitution according to which a village has to be specified by the Governor by public notification to be a village and includes a group of villages so specified. [Section 2 (33) of the Act]

The act has copied the provision of specifying a village from the PESA under section 7 proviso which states thus:

“Provided that while making a recommendation respect of a local area in the Scheduled Areas it shall be ensured that the local area shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditions and customs.”



It has been further stated under this section that the competent authority⁸ may recommend any local area for being specified as a village under Article 243 (g) of the Constitution. The problem with such a stipulation is that the competent authority is in no position to understand the traditions and customs of the villagers. The best body in this light would be the Gram Sabha, which comprise of those people following such traditions and customs. It is advisable that recommendations from the competent authority must go to the Governor only after due consultation with the Gram Sabha.

There is another provision which is given within section 7 of the Act that gives maximum population within a local area to be specified, to be fifteen thousand. For all practical purpose, this population limit can prove a hindrance. The actual figure should be decided on the basis of local conditions. This discretion to the competent authority especially in Scheduled Areas defeats the purpose of constituting a village at hamlet or group of hamlet level on the basis of customs and traditions of the community.

The competent authority has to make recommendations to the Governor to include or exclude any local area from a village or alter the limits of any village or for cesser of any local area to be a village, after consultations with the Taluka, district or village Panchayat and no reference has been made to the Gram Sabha for the purpose of such recommendations. This defeats the purpose of the PESA in the sense that any activity related to a village must not ignore the part which a Gram Sabha has to play. Thus it must be given equal, in fact greater powers than the Panchayats in the management of a village.

In the process of specifying a village under Section 7 of the Gujarat Panchayats Amendment Act, 1998, the procedure for this process has not been provided. The Governor needs to notify such villages at the hamlet or group of hamlets level in consultation with the respective hamlets to know whether they are comfortable with such an arrangement or not. Here the role of the Collector becomes important to carry out the administrative and legal responsibility. In fact, in most scheduled districts such information is already available for the village level. A simple appellate mechanism or provision of filing objections to such a reconstitution in a time bound manner may be added to make it a fair process.

On viewing section 7-A of the Bombay Land Revenue Code, 1879, it can be seen that the state government has the power to alter or add limits of a village or even amalgamate two or more villages or constitute a new village. Read with section 7 of the GPA, it can be noticed that it would be illegal to exercise power under section 7A without observing formalities laid down in section 7 of GPA. Thus, the section 7A has to be amended to certain extent so as to confirm with the PESA provision.

⁸ Section 2 (4), GPA



In light of the fact that the Gujarat PESA has tended to assign a more significant role to the Taluka Panchayat and at the lowest level to the Gram Panchayat, clearly there is a need to (a) amend laws to empower Gram Sabha in the areas mentioned above and (b) develop a well-defined perspective where simultaneous empowerment of Gram Sabha along with higher tiers of the Panchayat is made possible.

It almost seems that the State legislature has, by design, restricted the role of the Gram Sabha. Even where the central PESA provides for mandatory role of both the Gram Sabha and the Panchayat at appropriate level the amended Act has almost deliberately given such powers to either the Taluka Panchayat or the Village Panchayat. In this context there is an imperative need to explore vesting of more powers with the Gram Sabha in the State in keeping with the spirit of PESA.

With this backdrop following amendments are suggested:

Insert Section 7A to GPA

7A. Procedure for constitution or reconstitution of village in Scheduled Areas as per PESA- “Every such hamlet or group of hamlets constituting a village shall be notified by the Governor at the request of the Gram Sabha of such village through a duly passed resolution.

Provided that the hamlet or the group of hamlets which are managing their affairs in accordance with traditions and customs so submits through a resolution to the Collector who shall then forward it to the State Government for such notification.

Before the resolution is forwarded to the state government the Collector shall cause public notice of the substance of such a resolution to be affixed at convenient places in the hamlet or group of hamlets to be so notified and at office of the District Collector.

Provided further that the Collector may also give an opportunity to any hamlet or group of hamlets to object to any such formation within sixty days of such submission.

Insert Proviso to section 7A, Bombay Land Revenue Code, 1879

“Provided that in Scheduled Areas, any alteration, amalgamation, constitution or reconstitution of village (s) shall be done at the request of the Gram Sabha of such village (s) through a duly passed resolution.”

2.2.2 Presiding Officer of Gram Sabha in Scheduled Areas

As PESA intend to give greater autonomy and control to the Gram Sabha in managing its affairs according to its customs and traditions it would be useful to not leave these powers of the Gram Sabha subject to rules framed by the State Government. Section 93 of GPA correctly caters to the situation by mandating two ordinary meetings in a year with the exception of conducting extra-ordinary meetings when the Sarpanch requires so in his own motion. Even though the procedure is clear, it is necessary to add that the proceedings of the Gram Sabha shall be conducted according to the traditional customs.



Notwithstanding anything given in this provision, in Scheduled Areas, the gram Sabha shall be presided over by a respected person according to custom usage traditionally prevalent in that area.

Insert sub-section 4A into Section 93, GPA

“Notwithstanding anything given in this provision, in Scheduled Areas, the gram Sabha shall be presided over by a respected person according to custom usage traditionally prevalent in that area.”

3. Powers Exclusive to Gram Sabha:

3.1 Approve the Plans, Programmes and Projects for Social and Economic Development

The Central PESA mandates that *“every Gram Sabha shall 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.”*

The GPA makes clear that the Gram Sabha shall approve the plans, programmes and projects which are taken up for implementation by the Village Panchayat.⁹

Further on, under Section 241 of the GPA, it has been that mandated that any developmental work or scheme at a Panchayat level cannot be undertaken unless and until such scheme or work has been approved by the Panchayat and “competent authority” as defined under Gujarat Panchayats (Execution of Works, Development Schemes, grant-in Aid and Acquisition of Property) Rules, 1995. However, these provisions have not mentioned anything about an approval from the Gram Sabha for work schemes and grant-in-aid which are no doubt for the purpose of resulting in the social and economic development of the Panchayat.

Since the Central Act has specifically mentioned that the plans, programmes and projects are taken up by the Panchayat at the village level, the approval from the Gram Sabha is also needed to be added to fulfil the purpose of the PESA provision.

The Gujarat Panchayats (Execution of Works, Development Schemes, grant-in Aid and Acquisition of Property) Rules, 1995 formed in exercise of the powers conferred by sub-section (1) of section 274, read with section 241 of the GPA, will have to be read in accordance with the provisions of the State Act.

Accordingly the following amendments shall have to be made.

Insert proviso to section 180 after sub-section (4), GPA

“Provided that in Scheduled Areas, the gram sabha shall 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.”

⁹ Section 4 (3) (b) (i), GPA



Insert proviso to Section 241, GPA

“Provided that while undertaking any work or development scheme in Scheduled Areas, the Gram Sabha shall decide criteria for approval of every work or development scheme and implemented at the Panchayat level within which such Gram Sabha (s) exist. Provided that full and prior information on each such plan, program and project is provided by the project proponent to the Gram Sabha (s) in a language that is easily and commonly understood preferably in a vernacular language.”

3.2 Identification or selection of persons as beneficiaries

The Central PESA also mandates that *the Gram Sabha shall be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes. [Section 4 (e)(ii)]*

As per the GPA, the Gram Sabha shall also be responsible for the identification and selection of persons as beneficiaries. **[Section 4]**

The Social Justice Committees established at appropriate Panchayat levels were constituted under the Gujarat Village Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995, Gujarat Taluka Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995, Gujarat District Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995 by way of sections 93, 123 and 145 of the Gujarat Panchayats Act, 1993. The main role of these committees is to secure social justice for weaker sections of the society. Many of the functions provided within these Rules are of a socio economic nature such as loans and subsidies for various means of poverty alleviation. It would be useful to amend these Rules in the appropriate manner to ensure that each of these programmes pass the scanner of the Gram Sabha to be in conformity with the PESA mandate.

Accordingly, the following amendments are to be made.

Insert the following proviso to Rule 5, Gujarat Village Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995

“Provided that in Scheduled Areas, the Gram Sabha shall be responsible for identification and selection of persons as beneficiaries under the poverty alleviation and other programmes as per a criteria set by the Gram Sabha.”

Insert the following proviso to Rule 5, Gujarat Taluka Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995

“Provided that in Scheduled Areas, the Gram Sabha shall be responsible for identification and selection of persons as beneficiaries under the poverty alleviation and other programmes as per a criteria set by the Gram Sabha.”

Insert the following proviso to Rule 5, Gujarat District Panchayats Social Justice Committee (Constitution and Functions) Rules, 1995

“Provided that in Scheduled Areas, the Gram Sabha shall be responsible for identification and selection of persons as beneficiaries under the poverty alleviation and other programmes as per a criteria set by the Gram Sabha.”



3.3 Power to Issue certification of utilisation of funds

Central PESA mandates that “Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in, clause (e)”[Section 4(f)]

As per sub- sections 1A of section 112 of the GPA, “The village panchayats shall obtain from the gram sabha a certificate of utilization of funds by that Panchayat for the plans, programmes and projects referred to in sub-clause (i) of clause (b) of sub-section (3) of section 4.”

This provision is in conformity with PESA; hence, no change is required. However, it is important that the format of the utilization certificate shall be developed by the Gram Sabha. Necessary provisions for the same need to be inserted in the abovementioned section as:

Insert the following in proviso to sub- section 1A of section 112, GPA

“Every Gram Sabha shall also develop a format for granting utilization certificate which shall be formally recognized as such by the respective Panchayat within which such Gram Sabha exists.”

Format of Utilization certificate for use by Gram Sabha

Form of Utilization Certificate

Amount:

Total:

2. Certified that we the Gram Sabha of Village _____ have satisfied itself that the specifications on which the fund was sanctioned have been duly fulfilled / are being fulfilled and that we have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Certified that out of Rs. of fund sanctioned during the year in favour of For utilisation towards _____for which it was sanctioned and that the balance of Rs..... remaining unutilized at the end of the year has been surrendered to, dated)

Certified that we have satisfied ourselves that the conditions on which the funds were allocated have been duly fulfilled / are being fulfilled and that we have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Signature(Mukhiya/ Head of Gram Sabha of _____village)



Date

Note: If this form is accepted then the insertion suggested as proviso to sub- section 1A of section 112 of Gujarat Panchayats Act, 1993 shall be deleted.

- Gujarat Local Fund Audit Act, 1963

Section 2 (a) defines an auditor to mean “*the examiner or any other person empowered by the State Government to perform the functions of an auditor under this Act;*” As per PESA, the Gram Sabha must be the responsible body to certify the utilization of funds by the Panchayats at the village level. Thus it would give the Gram Sabha, the role of an auditor, in examining the ways in which the funds have been handled by the Village Panchayat. In this light amending the definition of auditor to serve the purposes of PESA is important.

Insert proviso to section 2 (a), Gujarat Local Fund Audit Act, 1963

“Provided that in Scheduled Areas Gram Sabha shall be the auditor for the funds allotted to the Village Panchayat within its jurisdiction for the various plans, programmes and projects.”

Section 2 (e) defines “*local authority*” as defined in clause (26) of section 3 of the Bombay General Clauses Act, 1904. On examining the particular clause (26), one can see that it includes a municipal corporation, municipality, local board, body of port trustees or commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund. The flaw with this definition of a local authority is that it does not include Gram Sabhas or Panchayats at all three levels. There is no doubt that these bodies are also local authorities in the sense that the role of a local authority is to administer the area for which it is constituted. They have a certain degree of autonomy with freedom to decide for themselves, questions of policy affecting the area administered by them. Moreover, they are entrusted such functions and powers of a statute, in this case the GPA. Thus it would be necessary to amend the definition of local authority in Gujarat Local Fund Audit Act, 1963, to include Gram Sabha and Panchayats at the three levels.

Insert proviso to section 2 (e), Gujarat Local Fund Audit Act, 1963

“Provided that in Scheduled Areas, local authority would also mean to include Gram Sabha, Village Panchayat, Taluka Panchayat and District Panchayat.”

4. Powers Exclusive to the Panchayat at Appropriate Level

4.1 Planning and Management of Minor water bodies:

The Central PESA mandates as follows: *Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level; [Section 4(j)]*



Common property resources (forest, water and common land) have formed an important livelihood resource base of the tribal communities. But laws enacted before independence and after it also, did not give control and management of these resources to the people. Recognizing this issue, PESA is an important step towards empowering the communities to manage the community resources. Minor water bodies are used by villagers for domestic purposes such as drinking, bathing, washing, irrigation, and fishing or even for religious purposes. Many water sources are owned by individuals and others are mainly for community use. Thus it becomes important for vesting rights in these common natural resources with the people who use it, rather than the administrators.

The underlying concept of PESA is to give more power to the Gram Sabha in managing daily affairs of the people in the villages. Thus it would have been appropriate to vest the planning and management of minor water bodies with the gram Sabha, which was not done. Moreover, PESA also does not define a minor water body which makes it difficult to ascertain the role of a Panchayat in planning and managing it.

As per section 99 of the GPA, Schedule I envisages matters in respect of which it is the duty of village Panchayats to make provisions. One of these is sub-entry (k-i) under entry 7 which is the planning and management of water bodies". GPA specifically vests the powers of planning and management of minor water bodies in the village Panchayats via the above given provision. Schedule II to the Act gives power to the Taluka Panchayat to make provisions with regard to use of water resources (**Entry 6 (b)**) and construction and maintenance of irrigation works in the taluka (**Entry 6 (c)**). District Panchayat can make provisions in respect to provision and maintenance of drinking water supply,¹⁰ provision for irrigation by canals from tanks and bunds, implementation of the schemes of tubewells and digging new wells and repairing old wells for irrigation.¹¹ All these provisions have highlighted as to which all are the appropriate bodies to manage various aspects of water bodies, be it for drinking water purpose, irrigation works, wells or canals. The Panchayats at all three levels have been entrusted with the responsibility to make provisions but in accordance with the PESA provisions, all the water bodies come especially under the ambit of Village Panchayats management.

There has been a lot of stress on the irrigation works and their management, within the state of Gujarat. Section 108 stipulates that, "*the state government may... vest in a Panchayat...well, river-beds, tanks, streams, lakes, nallas, canals, water-courses*" for the collection of water cess under the provisions of Bombay Irrigation Act, 1879.¹² Such local cess collected shall be paid by the State government to the taluka Panchayats after deducting collection costs.¹³ The state government shall entrust the responsibility of collection of such cess on the village Panchayats according to section 168 and if the former discovers that the respective Panchayat has

¹⁰ Entry 1(b) in the sphere of sanitation and health.

¹¹ Entry 11 (a), (b) and (c) in the sphere of minor irrigation projects.

¹² Section 193, GPA

¹³ Section 197, GPA



failed to exercise this responsibility, it may on consultation with the district Panchayat, withdraw such power of collection of cess vested in the village Panchayats.¹⁴ There are rules to this order, called the Gujarat Taluka Panchayats (Cost of Collection of Cess on Water Rate) Rules 1995. These Rules also gives the state government, the power to “*deduct as cost of collection, five percent of the total sum recovered as cess in any village.*”

Within the Bombay Irrigation Act, 1879, section 91 discusses the Panchayats irrigation works and their management by Panchayats at the taluka and the district level for purposes of agriculture and irrigation. Panchayat irrigation work is said to be “*any canal, channel, water course, stream, natural river, well, tube-well, artesian well, pipe or reservoir, natural or artificial, or any part thereof is constructed, maintained or controlled by a taluka panchayat in the exercise of its functions in the sphere of agriculture and irrigation as described in Schedule II to the Gujarat Panchayats Act, 1961 or by a district panchayat in the exercise of its functions in the sphere of minor irrigation projects as described in Schedule III to the said Act.*”

The role of the Gram Sabha on these aspects seems to have been missed and this assumes significance in the light of the fact that the Gram Sabha has a very minimal- if not negligible - control over the village Panchayats. This is especially the case when most of the water bodies are community owned and within the limits of a village. Any development or change which is brought about in these water-bodies, closely affect the lives of the villagers too. This is the reason why participation and consultation of the gram sabha is important in a context when the water body is situated within the precincts of a village.

The other aspect we need to consider is that besides agriculture and irrigation, there are various other purposes and uses of minor water bodies too. These uses though mentioned in the Schedule to the GPA, does not detail out the roles and responsibilities of the appropriate Panchayats. The procedure is also missing and this defeats the whole purpose of assigning matters to the Panchayats.

Insert sub-section 13A to section 3, GPA

“Minor Water Body means any water body upto 200 hectares.”

Insert sub- section 5A to section 100, GPA

“It shall be the duty of the village panchayat to undertake control and administer planning and management of minor water bodies upto 10 hectares.

Explanation I: Management of minor water body shall include all works of repair, restoration for maintenance, collection of lease money, levy of water rate, its collection and utilization as per annual plan prepared by Gram Panchayat in consultation with the respective Gram Sabha.”

Insert sub- section 6A to section 131, GPA

¹⁴ Section 172, GPA



“It shall be the duty of the taluka panchayat to undertake control and administer planning and management of minor water bodies between 11 to 99 hectares.

Explanation I: Management of minor water body shall include all works of repair, restoration for maintenance, collection of lease money, levy of water rate, its collection and utilization as per annual plan prepared by taluka panchayat in consultation with the respective Gram Sabha.”

Insert sub- section 5A to section 155, GPA

“It shall be the duty of the district panchayat to undertake control and administer planning and management of minor water bodies between 100 to 200 hectares.

Explanation I: Management of minor water body shall include all works of repair, restoration for maintenance, collection of lease money, levy of water rate, its collection and utilization as per annual plan prepared by district panchayat in consultation with the respective Gram Sabha.”

Insert the following phrase in Section 91, Bombay Irrigation Act, 1879

*“Where any canal, channel.....Panchayat Irrigation Work **“provided that in Scheduled Areas, plans for such work shall be made after consulting with the Gram Sabha”** and such a Panchayat Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3.....”*

5. Powers of the Gram Sabha or Panchayat at Appropriate Level

5.1 Consultation before Land Acquisition for Development Projects and before resettling or rehabilitating persons affected by such projects

The Central PESA mandates as follows: *‘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’*; (Section 4(i))

PESA makes it mandatory that the gram Sabha or the Panchayat at the appropriate level be consulted before land is acquired for development projects and before resettling affecting persons. The PESA left it to the discretion of the states to decide the appropriate tier for fulfilling this function. Ideally, all the tiers must be engaged. There must be a safeguard that gram Sabha would not only be consulted but also that its decisions would be adhered by the panchayats at the higher tiers.

Three legal issues emerge here.

- First, what is the legal meaning of consultation in the absence of any definition in the Act.
- Second, what should be the process of such consultation.
- Third, how has the discretion of allocating such power been exercised, given that the state can choose between the Gram Sabha or the Panchayat at appropriate



level for allocating such important power where the Gram Sabha is most likely to be affected.

Before, addressing these issues, it is important to examine as to how the state of Gujarat allocated this power.

Section 132A of GPA states as such:

“Taluka Panchayat to be consulted before acquisition of land and rehabilitation of persons affected.- The taluka Panchayat shall be consulted,-

(a) before acquiring under the Land Acquisition Act, 1894 any land situate in the taluka for any development project;

(b) before resettling or rehabilitating persons affected by such project.”

Language of clause section 4 (i) of PESA clearly shows that consultation is envisaged with either of the two entities, gram Sabha or Panchayats at appropriate levels. Had the legislative intent been that irrespective of consultation with Panchayats at any level, consultation with gram Sabha at village level was mandatory before acquisition of land in Scheduled Area for development project and before settling and rehabilitating persons affected by it, the said clause would have been so worded, and the legislature would have made its intention explicit by using words like “as the case may be” after the words “Gram Sabha or Panchayats at appropriate level”.

It can be seen that the state legislature has fully complied with the Central Act. In spite of this it can be observed that there are certain lacunas with this approach. Neither in PESA nor in any of the panchayat or land acquisition laws of Gujarat the term “Consultation” has been defined. “Consultation” as per its Dictionary meaning is an “act of seeking advice or opinion”¹⁵ which is non-binding in nature. In other words, the power of mandatory consultation does not give the right to accept or reject the proposal of acquisition or resettlement or rehabilitation, hence is inadequate to secure the rights of the village community affected by the acquisition. Therefore, it is recommended that in Central PESA and subsequently in respective Panchayat laws of Gujarat that the term consultation needs to be defined on the lines of “*free and prior informed consent*”.

Section 38 of the Land Revenue Code gives the Collector, the right to set aside land for any public or municipal purpose. Though the power has been given to the Collector, it would be suitable to consult with the respective Gram Sabha before exercising this power. Section 3 of the Land Acquisition Act, 1894, applicable in Gujarat defines public purpose in sub-section (f) to include:

“(i) the provision of village sites, or the extension, planned development or improvement off existing village sites;....

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;....

¹⁵ Black’s Law Dictionary, 8th ed.



(vii) the provision of land for any other scheme of development sponsored by Government, or with the prior approval of the appropriate Government, by a local authority;...”

Section 4 of the above given Act describes the power of the officials, pursuant to the publication of a preliminary notification of land meant for any public purpose and also the procedures thereafter. In this case, the Collector has the responsibility to give a public notice of such notification to the people of the said locality. Further on section 5-A stipulates the procedure for hearing of objections to any notification under section 4. In these provisions, it would be useful to include the role of Gram Sabha for land within the Scheduled Areas.

In light of the above gaps, clearly, the following corrective measures are also required:

- First, the term “Consultation needs to be defined on the lines of “Free, Prior and Informed Consent (FPIC) affirmed by international law and standards¹⁶”
- Secondly, as said earlier, the power of mandatory consultation is supposed to be given to either the Gram Sabha or any of the three tiers of Panchayats. In case of Gujarat, it is being given to the Taluka Panchayats. Although, it is not incorrect, for the sake of protecting the rights of the communities, ideally, the village community which is directly affected by the proposed acquisition should have the power to give consent or refuse the proposed acquisition or approve rehabilitation and resettlement schemes. The Gram Panchayat, must facilitate the process of consultation.
- Thirdly, since, as of now, there is no legislation on resettlement and rehabilitation either at the Central level or at the State level, therefore, to implement the provisions of PESA, the National Resettlement and Rehabilitation policy, 2007 needs to be given legal sanctity.

The following amendments are suggested:

Insert Section 132B, GPA

“Procedure for acquisition of land or for approval of resettlement and rehabilitation programs and schemes in Scheduled Areas as per PESA.-

In Scheduled Areas, no acquisition of land or resettlement and rehabilitation of persons affected by such acquisition shall take place without prior consultation with the Gram Sabha. The Collector shall convene a meeting of the Gram Sabha as per the provisions of Land Acquisition Act, 1894 carry out a consultation process with the Gram Sabha on the proposed acquisition of land or before resettlement or rehabilitation of persons affected by such acquisition.

¹⁶ General Recommendation XXIII of the United Nations (UN) Committee on the Elimination of Racial Discrimination, the UN General Assembly’s Plan of Action for the 2nd International Decade of the World’s Indigenous Peoples, International Labor Organization Convention 169 and many other international instruments recognize FPIC as a right of Indigenous Peoples and obligate states (countries) to uphold this right.



Provided that Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of National Resettlement and Rehabilitation Policy 2007 till the time a new legislation is passed

Provided that land compulsorily acquired for a project cannot be transferred to any other project or purpose except for a public purpose, without carrying out a fresh and prior consultation with the Gram Sabha.

Explanation I: For the purposes of this Act, Consultation with its cognate and grammatical variations shall mean publicising the acquisition proposal by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information about the acquisition proposal and its impact on livelihood and conservation.

Explanation II: The proposal shall include, the area proposed to be acquired, location of the area, purpose of acquisition, type of land to be acquired, estimate number of people to be displaced, impact on resources of the village, estimate number of trees shall be cut, impact on wildlife, consequences of acquisition of land particularly on the livelihood and the effects on surrounding area, resettlement and rehabilitation scheme proposed and such other information as the Gram Sabha may requires to take decision on the proposal”

Similar enabling provisions may be inserted in Land Acquisition Act, 1894 as applicable in Gujarat, through an Amendment Act to make it consistent with PESA and State Panchayat legislations.

Insert proviso after section 4 (1), Land Acquisition Act, 1894 as applicable in Gujarat:

“Provided that in Scheduled Areas, the Collector shall convene a meeting of the of the Gram Sabha as per the provisions of Section 132B of Gujarat Panchayats Act, 1993 and carry out a consultation process with the Gram Sabha on the proposed acquisition of land or before resettlement or rehabilitation of persons affected by such acquisition before publication of such preliminary notification.

Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of National Resettlement and Rehabilitation Policy 2007 till the time a new legislation is passed”

5.2 Prior recommendation in granting prospecting license or mining leases for minor minerals as well as grant of concession for exploitation of minor minerals by auction

Central PESA states that: *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; (Section 4(k))*

Central PESA states that *“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”*; (Section 4(l))



PESA makes the recommendations of the Gram Sabha or the Panchayats at the appropriate level mandatory prior to grant of prospective license or mining lease minor minerals in the Scheduled areas. As far as the recommendation of the gram Sabha before grant of minor minerals for auction is concerned, the prior recommendation of gram Sabha or Panchayats at the appropriate level should be mandatory for grant of concession for the exploitation of minor minerals by auction. The Gujarat Panchayat Amendment Act 1998 is silent on this provision. The relevant State laws need to be amended to redress this omission.

- PESA only makes recommendation of the Gram Sabha or the Panchayat at appropriate level mandatory, prior to the grant of prospecting licence or mining lease for minor minerals or for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. However, in law, recommendation is in the nature of opinion or view and is not binding on the party. Therefore, in order to adequately protect the interest and resources of the Gram Sabha, recommendation may be replaced with “*Free and Prior Informed Consent*”.
- Besides, ideally, the power of free and prior informed consent in case of grant of mining leases shall be given to Gram Sabha. It is important to ensure participation of the communities directly affected by mining operations in the decision making process.

Suggested Amendments in GPA

Insert Section 107-A

“Free, prior and informed consent of the Gram Sabha shall be made mandatory prior to grant of quarry lease or quarry permits or prospecting licences for exploitation of minor minerals in the Scheduled Areas and also for grant of concession for the exploitation of minor minerals by auction.

Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicising the proposal for mining or quarrying by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information about the mining/quarrying proposal and its impact on livelihood and conservation.

(2) Every application for renewal or transfer of quarry leases, quarrying permit, or for concession shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha is mandatory.

(3) The Gram Sabha shall also maintain a record of the mining leases, quarrying permits, concessions for exploitation of minor minerals by auction for which consent has been given.

(4) Gram Sabha may take assistance from Gram Panchayat, Taluka Panchayat or District Panchayat as the case may be in carrying out its functions under this section.

Explanation: The Gram Sabha shall have the authority to accept or reject the application of mining leases, quarrying permits and for concessions for exploitation of minor minerals by auction, prescribe or alter the rate of royalty/rent, promote competitive bid, prescribe conditions for mining leases, alter the area proposed for mining and period of



such lease, renewal of mining leases, quarrying permits or concession for exploitation of minor minerals by auction”

Insert section 99-A, GPA

“Gram Panchayat shall assist the Gram Sabha in carrying out its functions regarding grant of prospecting licenses, quarry lease, quarry permit of minor minerals or concessions for exploitation of minor mineral by auction as prescribed in Section 107-A (4) Orissa Minor Minerals Concession Rules, 1990.”

Insert section 130-A, GPA

“The Taluka Panchayat shall assist the Gram Sabha in carrying out its functions regarding grant of prospecting licenses, quarry lease, quarry permit of minor minerals or concessions for exploitation of minor mineral by auction as prescribed in Section 107-A (4) Orissa Minor Minerals Concession Rules, 1990.”

Insert section 154-A, GPA

“District Panchayat shall assist the Gram Sabha in carrying out its functions regarding grant of prospecting licenses, quarry lease, quarry permit of minor minerals or concessions for exploitation of minor mineral by auction as prescribed in Section 107-A (4) Orissa Minor Minerals Concession Rules, 1990.”

- **Bombay Land Revenue Code, 1879:**

As per section 69 and 69-A of the Code, the rights to mines, minerals discovered and quarries situate within the limits of the state territory vest in the State Government subject to the provisions of the Mines and Minerals (Regulation and Development Act, 1957. The State Government shall have the rights to access, occupy such lands and any other purposes which is required for prospecting and working mines. It shall also assign any other person its rights which are mentioned above. Any person whose rights get affected by such vesting of rights in the state government, shall be entitled to compensation. In all of these processes, the rights of the tribals and the Scheduled Tribes residing in the land for generations have been ignored. They have in fact been given no power to interfere in cases wherein their rights to the common property have been ignored. In order to fulfil the purpose of the central PESA, it would be appropriate to include the power of Gram Sabha in giving free, prior and informed consent prior to grant of quarry lease or quarry permits or prospecting licences for exploitation of minor minerals in the Scheduled Areas and also for grant of concession for the exploitation of minor minerals by auction. To this effect the following amendment should be made.

Insert proviso to section 69-A (1), Bombay Land Revenue Code, 1879

“Provided that in Scheduled Areas free and informed consent of the Gram Sabha within the jurisdiction of which such land is situate shall be obtained prior to grant of quarry lease or quarry permits or prospecting licences for exploitation of minor minerals in the Scheduled Areas and also for grant of concession for the exploitation of minor minerals by auction.”

Following changes shall be made within the Gujarat Land Revenue Rules, 1972.



Substitute the following words in Rule 67

“67. Removal of earth, stone, etc., by villagers for their own use without fee with the permission of the “Gram Sabha”.- (1) With the previous permission in writing of the “Gram Sabha”, or where there is no such “Gram Sabha”, of the “Taluka Panchayat”, but without payment of fee.....

(2)..... where it appears to the “Gram Sabha” that any case of which application is made to “it” under this rule falls under rule 69 “it” shall refer the application to the “Taluka Panchayat” for orders.”

In Rule 68, substitute the word “mamlatadar” with “Gram Sabha”.

- **Gujarat Minor Mineral Rules, 1990:**

The term “minor mineral” has to be understood in the context of Mines and Minerals (Regulation and Development) Act, 1957. Section 3 (e) defines minor minerals to mean building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purpose and any other mineral which the Central Government may, by notification in the Official Gazette, declared to be a minor mineral. At the state level ordinarily Minor Mineral Concession Rules are notified for regulating the grant of quarry leases, mining leases or other mineral concessions.

The Gujarat Minor Mineral Rules, 1966 empowers “competent officer” to sanction the grant of quarrying and mining lease. As per the rules, the competent officer means a government officer or such officer of the district Panchayat or Taluk Panchayat as the State Government may appoint. Therefore, under the existing law there is no role of the Gram Sabha in grant of leases. Amendment to these minor mineral rules is therefore necessary for giving effect to the mandate under PESA.

- **Administrative Response on Minor Minerals**

Response to the Supreme Court judgment dated 11th July, 1997 in *Samatha v State of Andhra Pradesh* where the Supreme Court observed that the Committee of Secretaries should be constituted to look into the issues discussed in the *Samatha* case in such states where total prohibition of grant of mining lease to non-tribals in scheduled areas does not exist.

Suggested Amendments in Gujarat Minor Mineral Rules, 1966

Insert Sub- Rule (5) in Rule 6

“(5) In a Scheduled Area, no quarry lease or quarry permit shall be granted without taking free, prior and informed consent of the Gram Sabha in case if the proposed mining area falls within the territorial jurisdiction of two or more Gram Sabhas.

Explanation: Free, prior and informed consent shall with all its cognate and grammatical expressions shall mean as defined in Explanation to Section 107-A (1) of Gujarat Panchayats Act, 1993.”

Insert sub-rule in Rule 7



“If the proposed mining area falls within a Scheduled Area, after receipt of the application for mining leases the Competent Authority shall inform the Gram Sabha as the case may be, within whose jurisdiction the proposed area of mining falls, about the particulars of such application. Thereafter, the Competent Authority along with the Applicant shall organize a consultation with the Gram Sabha as the case may be and inform about the conditions of quarry leases, area proposed for mining, period of lease, rehabilitation and resettlement plan for the persons displaced by proposed mining operations and such other relevant information sought by the Gram Sabha. The Gram Sabha shall then, through a resolution decide on the proposal and inform its decision to the Competent authority which shall be binding on the Competent Authority and the Applicant.”

Insert Sub-Rule (4) in Rule 15

“The location and size of the Area proposed for exploitation of minor minerals in Scheduled Areas shall be approved by the Gram Sabha or Gram Sabhas as the case may be.”

Insert Sub-Rule (ia) in Rule 18

“Free, prior and informed Consent of the Gram Sabhas shall be mandatory on every application for renewal of mining lease in Scheduled Areas”

Insert Sub-Rule (aa) in Rule 20,

“Free, prior and informed Consent of the Gram Sabhas shall be mandatory on every application for transfer of mining lease in Scheduled Areas.”

Insert Sub-Rule (3) in Rule 21

“Rent and Royalty for mining in Scheduled Areas shall be decided in consultation with the Gram Sabha. Such Rent and Royalty received from mining leases or quarrying permits shall be shared with the Gram Sabha or Gram Sabhas in such proportion as decided by the Mining Department of Gujarat and the Gram Sabha or Gram Sabhas.”

Insert Sub-Rule (xxix) in Rule 22

“The Gram Sabha may impose such other conditions, alter of modify prescribed conditions for mining leases in scheduled areas, as it deems necessary”

Insert Sub-Rule (ca) in Rule 27

“Applicant seeking mining leases for exploitation in Scheduled Areas shall prepare a rehabilitation and resettlement scheme in the format prescribed by the Competent Authority, for persons affected by the proposed mining operations and present the same to the Gram Sabha for approval under Rule 7. The Gram Sabha shall consider the scheme and pass a resolution approving, rejecting or modifying the same.”

Insert Sub- Rule (3) in Rule 34

“Free, prior and informed Consent of the Gram Sabha shall be mandatory as per the procedure prescribed in the Rules on every application for quarrying permit in Scheduled Areas”

Insert Sub-Rule (4) in Rule 34

“If the proposed mining area falls within a Scheduled Area, after receipt of the application for quarry permit, the Competent Authority shall inform the Gram Sabha or Gram Sabhas as



the case may be, within whose jurisdiction the proposed area of mining falls, about the particulars of such an application. Thereafter, the Competent Authority along with the Applicant shall organize a consultation with the Gram Sabha or Gram Sabhas as the case may be and inform about the conditions of quarry permit, area proposed for mining, period of lease, rehabilitation and resettlement plan for the persons displaced by proposed mining operations and such other relevant information sought by the Gram Sabha. The Gram Sabha shall then, through a resolution decide on the proposal and inform its decision to the Competent authority which shall be binding on the Competent Authority and the Applicant.”

Insert Sub –Rule (4) in Rule 37

“The Gram Sabha may impose such other conditions, alter or modify prescribed conditions for quarrying permits in scheduled areas, as it deems necessary”

Insert Sub –Rule (2) in Rule 42

“Revenue generated from penalty levied for unauthorized extraction and removal of minor minerals in scheduled areas shall be shared with the Gram Sabha or Gram Sabhas in such proportion to be decided by the Mining department in concurrence with the Gram Sabha(s)”

Insert proviso to Rule 44

“Provided that in Scheduled Areas, free and informed consent of the Gram Sabha shall be mandatory prior to the granting of concession for the exploitation of minor minerals by auction.”

6. Powers to Gram Sabha and Panchayat at Appropriate Level

6.1 Enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants

The Central PESA mandates that *“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, among others, the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant [Section 4m(i)].*

The Gram Sabha system in Gujarat has been exemplary in enforcing this particular provision. The Gram Sabha has been vested with the power to pass resolutions for absolute prohibition of the use of intoxicants in the village of its jurisdiction. A system of fine has been introduced for any violation of this resolution and this has turned out to be a good means of earning substantial amount of money. Further on it has also been enabled that all petty crimes relating to alcohol would be settled through the Gram Sabha and the local police would be informed accordingly so that the local dispute resolution mechanism, which is more socially effective, can be facilitated without any outside interference. Though ideal, these mechanisms do not have a legal binding. The GPA within its Schedule I gives the power to make



provisions for enforcing prohibition and regulating or restricting the sale and consumption of intoxicants with the Village Panchayats.

While the study of the Bombay Prohibition Act, 1949 dealing with intoxicants reveals that the substantial powers in this respect have been vested in government. It confers all the powers in respect of granting licenses for manufacture, possession and sale of any intoxicants to the Director of Prohibition and Excise¹⁷. Further it is the duty of the state to regulate import, export and transport¹⁸ of the intoxicants in the State. Thus we see that the State officials enjoy the overall control over the sale and consumption of intoxicants. However the Act casts a duty on the Panchayats to give information about the unlicensed manufacture of any intoxicant,¹⁹ but the action against such erring persons shall be taken by the State officials.

- In scheduled areas of Gujarat this power needs to be granted to the Gram Sabha along with the Panchayat at Appropriate Level depending on the area of influence. **The Bombay Prohibition Act, 1949** needs to be amended as follows through an amendment Act.

Insert Chapter VI-B

Regulating Manufacture, Sale, Consumption, Possession of Intoxicants in Scheduled Areas

“Notwithstanding anything contained in any part of this Act or rules framed thereunder, from the day of coming into force of this amendment, the provisions of this Chapter shall be applicable to Scheduled Areas of Gujarat. All acts done previously under the provisions of this Act in Scheduled Areas shall be deemed to have been done under the provisions of this Chapter

- a. In the Scheduled Areas, no licence for manufacture, possession or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, establishment of breweries, distilleries and warehouses shall be provided, without the prior approval of the Gram Sabha. The Competent Authority to grant license for the sale, possession or manufacture of any intoxicant shall refer every proposal to the concerned Gram Panchayat along with the respective Gram Sabha within that jurisdiction for their decision, within thirty days from the date of receipt of such a reference. The Gram Panchayat along with the concerned Gram Sabha shall intimate their decision within thirty days thereafter. The competent Authority shall ensure that such intimation has been sent and also a response received conveying the decisions of the Gram Panchayat as well as the respective Gram Sabha.*
- b. Where the intoxicant is manufactured for personal consumption in the village, the Gram Sabha shall specify the quantity allowed to be manufactured per household, stored and possessed in consultation with the Collector.*
- c. The Gram Sabha shall specify the quantity for retail sale and wholesale of any intoxicants in the village in consultation with the Collector.*

¹⁷ Section 3

¹⁸ Section 33

¹⁹ Section 133 and 134



- d. *The Gram Sabha shall specify the licensing fee and other conditions for manufacturing intoxicants for commercial purposes only and their sale in consultation with the Collector.*
- e. *The Gram Sabha shall specify the area for setting up of distilleries, breweries, outlets for sale and warehouses for intoxicants within the village in consultation with the Collector.*
- f. *The Gram Sabha shall also specify the terms and conditions for employment of women and children in the manufacturing units in consultation with the Collector,*
- g. *The Gram Sabha shall also specify the terms of lease, rent, time of opening and closing of retail and wholesale outlets within the village and such other conditions as the Gram Sasan may deem necessary to prescribe from time to time in consultation with the Collector.*
- h. *Twenty percent of the revenue generated from payment of licensing fee, rent, penalty shall be deposited in the funds of the Gram Sabha and shall be used for the development of the village.*
- i. *The Gram Sabha shall maintain a register, to record the particulars of the licensee, manufacturing unit, retail and wholesale outlets operating in the village, terms and period of license, renewal of licenses and such other particulars as the Gram Sasan may deem necessary.*
- j. *The Gram Sabha may impose prohibition on the manufacture, sale, consumption, possession of many intoxicants within the village in consultation with the Collector.*
- k. *In case of violation of any of the conditions of the license or rules framed by the Gram Sabha regarding manufacture, sale, consumption or possession of any intoxicants, the Gram Sabha shall after giving the licensee a reasonable opportunity of being heard, impose a penalty or any other restriction as prescribed by it and shall also have the power to cancel the license. After passing a resolution to impose a penalty or cancel the license, or impose any other restriction, the Gram Sabha shall send a copy of its resolution to the Competent Authority which issued the license, and to the Gram Panchayat. The Competent Authority shall proceed to act on the decision of the Gram Sabha and recover the penalty or cancel the license of the manufacturer or the retailer or impose any other restriction specified by the Gram Sabha in its resolution, within one month of receiving the resolution of the Gram Sabha. The Gram Panchayat shall assist the Gram Sabha to carry out all functions mentioned in this Chapter.*

Provided that on the death of a licensee operating in Scheduled Areas, the licence shall be allowed to be continued in favour of the legal representative or heir of the deceased, only after seeking prior written approval of the Gram Sabha”

Insert Proviso to Section 60

“Provided that, prior to collection, storage and sale of Mhowra Flowers from within a Scheduled Area, permission of the Gram Sabha of that village or villages shall be taken”

Insert Subsection in Section 89

“For regulation of Intoxicants in Scheduled Areas, the Gram Sabha shall make rules for grant of license for manufacture and sale of intoxicants, duration of licenses, terms for renewal of licenses, fix the number of manufacturing units or retail outlets to be set up in the village, places for establishing manufacturing units or retail outlets, time of opening and closing of liquor shops, prohibition on sale manufacture and sale of certain intoxicants in the village, restriction on the quantity or retail sale of intoxicants, prohibition on sale of



intoxicants to certain persons and such other rules as the Gram Sabha deems necessary. Gram Panchayat shall organise a meeting of the Gran Sabha for framing rules for regulating the above mentioned activities.”

Insert Proviso in Section 105 (1)

“Provided that provisions of this Chapter or rules framed thereunder, shall not apply to Scheduled Areas of Gujarat to the extent they are inconsistent with the provisions of Section 4m (i) of Panchayats (Extension to the Scheduled Areas) Act, 1996 and matters listed within Schedule I of the Gujarat Panchayats Act, 1993. All acts done previously under the provisions of this Chapter in Scheduled Areas shall be deemed to have been done under the provisions of this proviso.”

Insert Section 143(3A)

“If any rule framed by the State Government for regulation of intoxicants within the purview of this Act, so far as it is applicable to Scheduled Areas, is inconsistent with a corresponding Rule(s) framed by the Gram Sabha or Gram Sabhas, in that case the said rule(s) framed by the Gram Sabha or Gram Sabhas shall supersede the one framed by the State Government.”

Insert Proviso in Section 146B:

“provided that in Scheduled Areas, no intoxicant shall be exempted by the State Government from the purview of this Act except with the prior approval of the Gram Sabha”

Insert Rule 4-A to The Bombay Foreign Liquor Rules, 1953

“Applicability to Scheduled Areas-. These Rules shall not be applicable to the sale of intoxicants in Scheduled Areas.”

Insert Proviso to Rule 32

“Provided that in Scheduled Areas, the licensee shall also affix a list of categories of persons to whom the sale of liquor is prohibited.”

6.2 Ownership of Minor Forest Produce

Regarding Minor Forest Produce, the Central PESA provides ...“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 the ownership of minor forest produce; [Section 4(m) (ii)]

PESA and FRA vest the right of ownership of MFP in the Gram Sabha. Ownership right is a collection of several rights which include, access, collection, storage, local level processing and disposal among others. Both of these legislations are key legislations of Scheduled Area governance, therefore they need to be read together. PESA endows ownership of MFP but is silent on other aspects like access and use.



An examination of the Gujarat Minor Forest Produce Trade Nationalization Act 1979 is important in this regard. The GPA has vested in the Village Panchayat minor forest produce in such area of a forest as is situated in the jurisdiction of that village. However, minor forest produce found in the area of National Parks or Sanctuaries in the State has been excluded.²⁰ The corresponding changes in the 1979 Act and Rules have also to be made effective. Presently under the Act no person other than the State Government or an authorized officer or agent shall purchase or transport minor forest produce in the State of Gujarat. Besides, the State Government is to fix the price at which each class of the minor forest produce shall be purchased by it or by an authorized officer or agent²¹. In the light of the spirit of the PESA certain amendments needs to be carried out in the provisions of purchase/registration and disposal of minor forest produce for the Scheduled Areas of the State.

- The ownership of minor forest produce must be vested in the Gram Sabha and the Gram Panchayat. The functions carried out by the Gram Panchayat by virtue of its ownership rights over minor forest produce should ideally be controlled and supervised by the Gram Sabha as well the instructions issued by the State Government. PESA does not impose any condition on the enjoyment of ownership rights over MFP.
- Government of Gujarat notified the Gujarat Minor Forest Produce Trade Nationalization Act 1979 and corresponding rules. It explains Minor Forest Produce as classes of forest produce which include timru leaves, mhowra flowers, mhowra fruits, seeds and doli and also any other class of forest produce which the State Government notifies in the Official Gazette as minor forest produce.
- It can also be observed that the State government shall fix the price of the MFP after consultation with a committee. This committee comprises of various members including a grower authorised by a local authority and a member of Scheduled Tribes. This requirement for consultation needs to be amended with respect to Scheduled Areas, wherein the Gram Sabha must be consulted.

The GPA needs to be amended in the following manner.

²⁰ Section 108 (5) (a), GPA.

²¹ Section 3 and 4 of Act.



In section 108, after sub-section (5), sub-section (6) shall be inserted

“(6) (a) The right to own and right of access to collect, use and dispose of minor forest produce within and outside the village boundaries where members of Gram Sabha of a village have had traditional access shall be vested in the Gram Sabha and the Gram Panchayat.

The Gram Sabha shall prepare a list of minor forest produce that are of importance for the livelihood of the people of the village and send a copy of it to the Gram Panchayat and the Forest Department each. The Gram Sabha shall also have the power to revise this list to include or exclude any minor forest produce, as and when it may deem necessary and having due regard to its sustainability.

Explanation – for the purposes of this section, “Minor Forest Produce” includes all non-timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and ‘forest produce’ which would be notified by the State Government.

Explanation- The term ‘timber’ would be assigned the same meaning as in Indian Forest Act as applicable in Gujarat except the inclusion of bamboo.

(b) Gram Sabha and the Gram Panchayat shall be facilitated by the Forest Department in the overall management of MFP for its sustainable management and use especially through value addition, market linkages and minimum support price among others.”

- Besides, amendments needs to be inserted in existing legislations regulating access, use, transit, marketing of forest produce in Gujarat, to bring them in conformity with PESA and Panchayat legislation.

Gujarat Forest Act, 1972

Insert explanation in Section 2(4),

“Forest produce shall include minor forest produce also. Minor Forest Produce shall include all non-timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and ‘forest produce’ which would be notified by the State Government.”

Insert Amendment in Section 2(7)

Delete “bamboo” from the definition of tree

Insert proviso in Section 15

“Provided that in Scheduled Areas the bonafide right of ownership access to collect, use and dispose of minor forest produce as mentioned in PESA and Forest Rights Act, of any person or person living in and around a proposed reserved forest shall be affected by the settlement and recording of rights process carried out by the Collector. The right shall be recorded as it is by the Collector.”

Insert proviso to Section 24(2)

“Provided that in Scheduled Areas this provision shall not apply to “minor forest produce.””



Insert proviso in Section 26(1)g)

“Provided that where in a Scheduled Area, any person commits theft of any minor forest produce or collects more than the quantity permissible by the Gram Sabha, shall be punishable with such additional fine as may be prescribed by the Gram Sabha.”

Insert Proviso in Section 28 (2)

“Provided that in Scheduled Areas, the constitution of a village forest shall not affect the right to own, access to collect, use and dispose of minor forest produce within and outside the village boundaries where the members of the Gram Sabha have had traditional access. This right shall continue to be exercised by the Gram Sabha and the Gram Panchayat, notwithstanding the constitution of a village forest by the State Government.”

Insert Proviso in Section 30(a)

“Provided that in a protected forest falling within a Scheduled Area, the Government shall not reserve any tree which has been declared as a minor forest produce without the approval of the Gram Sabha or Gram Sabhas within whose jurisdiction notified area is situated”

Insert Proviso in Section 30(c)

“Provided that in a protected forest falling within a Scheduled Area, the Government shall not prohibit the collection and removal of minor forest produce without seeking prior permission from the Gram Sabha or Gram Sabhas within whose jurisdiction the notified area is situated.”

Insert Proviso in section 32

“Provided that in Scheduled Areas, any rules framed by the state government within this section, which impacts minor forest produce shall be in conformity with any rules framed by the Gram Sabha or Gram Sabhas governing, access to collect, use and dispose of minor forest produce.”

Insert Section 41(3)(a)

“In Scheduled Areas, all rules regarding the transit and possession of minor forest produce shall be framed in consultation by the Gram Sabha.”

Insert Proviso in Section 55

“Provided that in Scheduled Areas, in case any offence is committed regarding a minor forest produce, such power shall be exercised by the Gram Sabha. The forest officers shall render all necessary assistance to the Gram Sabha in preventing the commission of such offences.”

The Gujarat Minor Forest Produce Trade Nationalization Act, 1979

Replace sub-section 9 (d) of Section 2 with “all non-timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and ‘forest produce’ which would be notified by the State Government.”

Insert proviso in Section 3

“Provided that, in a Scheduled Area, the State Government shall not execute a contract for



sale of Minor forest produce as defined in the Gujarat Forest Act, 1972. Gram Sabha shall be competent to contract the sale of minor forest produce.”

Insert sub-section (4) in Section 4

(a) “These provisions and rules frames thereunder shall not be applicable to collection of minor forest produce by anyone who has a bonafide right to collect, use and dispose of minor forest produce under section 3(1)(c) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006 and section 4(m)(ii) of the Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996.”

(b)The Schedule of Rate for collection of minor forest produce in Scheduled Areas may be prescribed by the Gram Sabha in consultation with the Gram Panchayat.”

Insert Proviso to Section 15

“Provided that this provision shall not apply to minor forest produce collected from a Scheduled Area in the State, where the minor forest produce shall be deemed to the property of the Gram Sabha or Gram Sabhas of the village(s) from where it was collected.”

Insert sub-section (2) to Section 12

“This provision shall not apply to sale of minor forest produce collected from Scheduled Areas. The manner, quantity, price, buyer and other aspects of disposal of minor forest produce shall be decided by the Gram Sabha of the village from where the minor forest produce is collected.

Provided that the forest department and the Gram Panchayat shall render necessary assistance to the Gram Sabha in disposal of minor forest produce.

6.3 Prevention of alienation of land in Scheduled Areas and taking appropriate action to restore alienated land to the Scheduled Tribe

The Central PESA mandates *“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 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;”* [Section 4(m)(iii)]

The Amendment Act brought about changes in the Bombay Land Revenue Code 1879 as applicable to the state of Gujarat. The Amendment Act was silent on the question of Gram Sabha or Panchayat at appropriate level being given powers for prevention of land alienation and restoration of alienated land. However the amendment in section 73AA of the Land Revenue Code brought about by the Amendment Act 1998 vests with the Panchayat some powers in this regard. The Act as amended now requires that occupancy over land of a person belonging to any Scheduled Tribe shall not be transferred to any person without previous sanction of the District Panchayat. District Panchayat has replaced the powers of the previous sanction of the Collector in the amended law. It is pertinent to note here again that the previous sanction of the District Panchayat would not be a requirement if an agriculturist is to alienate his land or land based interests with a view to mortgage or



create a charge of his land in favour of a bank for the purpose of obtaining financial assistance from that bank.

The ideal approach would be to vest the power to prevent alienation of land and restoration of any unlawfully alienated land in the Scheduled Areas, to the Gram Panchayat, under the supervision and control of the Gram Sabha
Following amendments are suggested:

Insert sub-section 5B to Section 100, GPA

“The Gram Sabha along with the Panchayat at appropriate level depending on the area of the land and their jurisdiction shall have the authority to prevent any unlawful alienation of land as well restore unlawfully alienated lands belonging to the scheduled tribe in a scheduled area as well as any land within a scheduled area.

Provided further that the Collector through the Sub Divisional Officer or any other officer so authorised shall provide all assistance in implementing the decision of the Gram Sabha along with the Panchayat at appropriate level of the concerned jurisdiction in a time bound manner preferably within a period of three months of receipt of reference from the Gram Sabha along with the concerned Panchayat.

Bombay Land Revenue Code

In subsections (1), (2) and (3) of Section 73- AA, the words “the District Panchayat” shall be replaced by the words, “the Gram Sabha along with the Panchayat at appropriate level”.

6.4 Control over Institutions and Functionaries in all Social Sectors

Regarding institutions and functionaries in all social sectors, the Central PESA provides “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 the power to exercise control over institutions and functionaries in all social sectors; [Section 4(m)(vi)]

There are two issues that require analysis. First is the identification of the social sectors and functionaries within those social sectors and secondly, prescribing various types of control over those social sectors. Control over social sectors can be exercised through financial and administrative mechanisms and Gram Sabha and Panchayat at appropriate level can be accorded mechanism for control over different aspects of the social sector.

Some of the indicative social sectors are as follows:

1. Employment
2. Education
3. Health
4. Rural water supply and sanitation
5. Women and child development

It is pertinent to note that the Gujarat Panchayats Act 1993 vests a number of powers and duties with the village Panchayats. Schedule I of the Act lays down the



matters in respect of which the Village Panchayat is empowered to make provisions. These include matters in relation to sanitation and health, public works, education and culture, village defence, planning and administration. In Schedule I of the GPA, entry 11 vests the power to exercise control over institutions and functionaries in all social sectors with the Gram Panchayats.

Though constituted out of the Gram Sabha, the Village Panchayats fall short from being the executive arm of the Gram Sabha. This is because the Gram Sabha does not have the power to approve the Village Panchayat budget. Besides, there is nothing within the Act that binds the Village Panchayat to act upon the decision of the Gram Sabha. The empowerment of the Gram Sabha would not be possible unless a well-defined, organic linkage between the Sabha and the Village Panchayat is established.

As per the Gujarat Village Panchayats Social Justice Committee (Constitution and Function) Rules, 1995, the Committee at the Village Panchayat level constituted herein has been entrusted with various functions for social and economic development of the rural areas such as

- To provide socio-economic facilities including education, village sites, house sites, (loans, subsidy) drinking water and medical care to the weaker sections of the society; to investigate into the cases of injustice to and discrimination against the weaker sections of the society; to look after street light facility in the rural areas; primary, secondary and adult education, etc.
- Amendment was required in Section 241 of the GPA owing to the fact that role of Gram Sabha was not clarified. This amendment can be seen in the section in this report on selecting beneficiaries for poverty alleviation and other programmes. It is a manner of administrative sanction for works and schemes with the involvement of Gram Sabha. It entails the control over institutions and functionaries in all social sectors pertaining to various programmes, thus relevant to this purpose as well.
- As noted from above, Panchayats have been given the power to exercise control over functionaries in social sector and institutions. PESA envisages that this power shall be given to Gram Sabha and Panchayat at appropriate level. In Gujarat, this power must also be given to the Gram Sabha. Following amendment has been suggested:

Insert Subsection (2A) in Section 100 of GPA

“In Scheduled Areas, the Gram Sabha shall exercise control over institutions and functionaries in social sectors within the village.

All community workers, employees of government working in schools, dispensaries, hospitals, anganwadis, rest houses any other social institution or under any scheme initiated by the central or state government or assisting the Panchayat in carrying out its functions mentioned in the Eleventh Schedule of the Constitution and respective Panchayat legislations in Orissa, functioning within the village, shall be registered with the Gram Sabha of that



village.”

Insert proviso to Section 103, GPA

Provided that in Scheduled Areas the Gram Sabha shall perform all the functions and exercise all powers mentioned in this section along with the Village Panchayat.

Insert proviso to Section 137, GPA

Provided that in Scheduled Areas the Gram Sabha shall perform all the functions and exercise all powers mentioned in this section along with the Village Panchayat.

Insert proviso to Section 162, GPA

Provided that in Scheduled Areas the Gram Sabha shall perform all the functions and exercise all powers mentioned in this section along with the Village Panchayat.

Insert Explanation to Rule 5, Gujarat Village Panchayats Committee (Constitution and Functions) Rules, 1995

“The Gram Sabha shall perform all the functions and exercise all powers mentioned in these Rules along with the Village Panchayat.”

6.5 Management of Village Market

The Central PESA mandates: “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 the power to manage village markets by whatever name called. [Section 4(m) (iv)]

As mentioned in the previous section, the GPA of 1998 was also silent on the powers of the Panchayat (at appropriate level) to manage the village markets. This is an omission that needs to be corrected. For instance, *Gujarat Agricultural Central Produce Market Act of 1963* can be suitably amended to allow for the intervention of Gram Sabha in the management of village market especially for agricultural produce. The said 1963 Act regulates buying and selling of agricultural produces and establishes market for the sale in the State of Gujarat. The Act provides for creation of market committees for the efficient regulation of purchase and sale of any specified kind of any agricultural produce in the market area. At present there is no representation of Panchayat in the said committee, which largely remains a bureaucratic body. The Gram Sabha particularly can be involved in the management of the market because the duty of every market committee is to collect and maintain information related to market intelligence and supply the same to the government whenever so required. On these aspects the Gram Sabha can be said to be more capable than any other body²².

In light of the above given observations, the following amendments need to be made.

²² For detailed understanding of powers and statues of market committees see chapter IV of 1963 Act.



Replace the definition of “market” given in Section 2 (xii), Gujarat Agricultural Central Produce Market Act of 1963 with the following:

“Market means any place set apart ordinarily or periodically used for the assembling of persons for the sale or purchase of grains, fruits, vegetables, meat, fish or other perishable articles of food or for the sale or purchase of livestock or poultry or any agricultural or industrial produce or any raw or manufactured products or any other articles or commodities necessary for the convenience of life.”

Insert Section 6-A after Section 6, Gujarat Agricultural Central Produce Market Act of 1963:

“Declaration of market areas and their management in Scheduled Areas.-

In Scheduled Areas, the Gram Panchayat shall manage village markets by whatever name called, under the control and supervision of Gram Sabha. In the exercise of this power Gram Panchayat shall

- (1) Specify, with prior consultation with the Gram Sabha the place of setting up such markets,*
- (2) No shops shall be allowed to be opened in a market area without a license issued by the Gram Panchayat. The person for applying license shall submit an application. The Gram Panchayat shall take approval of the Gram Sabha on the applications submitted. The Gram Sabha shall pass a resolution, within one month of receiving the application, accepting or rejecting the application and prescribing such conditions of license as it may deem necessary. The resolution shall be forwarded to the Gram Panchayat which shall then proceed to act upon the resolution.*
- (3) The Gram Sabha may also auction the shops in the market area.*
- (4) The Gram Sabha shall fix the schedule of rate of fee in respect of every such market operating within its jurisdiction such as;
 - i. fee for the use of, or for exposing goods for sale in such market*
 - ii. fee for the use of shops, stalls, stands, pens in such market,*
 - iii. Fee on vehicle (including motor vehicles as defined in the Motor Vehicles Act, 1939) or park animals bringing, or on persons carrying any good for sale in such market;*
 - iv. Fees on animals brought for sale into or sold in such market*
 - v. License fees on brokers, commission agents, weighman and measures practicing their calling in such market**

The schedule of rates shall be exhibited at the place of the market by the Gram Panchayat, at the office of the Gram Sabha or any other conspicuous place in the village.

- (5) The Gram Sabha shall also levy such penalty or cancel the license of any person acting in contravention of any of the terms of the license or this provision.*
- (6) The Gram Sabha shall also fix the days of operation of a village market in a month.*
- (7) The Gram Sabha may also prohibit the display or sale of any commodity in a village market.*
- (8) Gram Sabha shall make such Rules for the proper management of the village markets as and when it may deem necessary.*



6.6 Control over money lending

The Central PESA mandates: *“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 the power to exercise control over money lending to the Scheduled Tribes; [Section (4) (m) (v)]*

In lieu of the Central PESA, the Amendment Act inserted a new section in the Bombay Moneylenders Act 1946. This new provision under the 1946 Act directs that no money lender shall lend any money to a member of the Scheduled Tribe residing in a Scheduled Area of the state without previous sanction of the Village Panchayat of the village. Note here that the PESA requires that Panchayat at appropriate level and Gram Sabha should be endowed with powers to exercise control over money lenders in the Scheduled Areas. Much would depend on how the words “exercise control” are interpreted. If these words are given their full liberal interpretation, merely insertion of section 17 A under the Act would not be enough. Powers for Gram Sabha and Panchayats at higher tiers enabling them to intervene in areas of registration and licensing for money lenders would need to be provided by way of further amendments to the 1946 Act. The following amendments shall be made in order to resolve this problem to the Bombay Money- Lenders Act, 1946 and Rules, 1959.

Bombay Money- Lenders Act, 1946

Insert Proviso to section 3

“Provided that in Scheduled Areas, the officers appointed under this section shall comply with the directions of the Gram Sabha and shall assist the Gram Sabha in controlling over money lending within its jurisdiction”

Insert Proviso to Section 4

“Provided that in Scheduled Areas, the Gram Sabha shall maintain a register of money lenders in such form and containing such particulars as may be decided by the Gram Sabha and inform the respective Panchayats.

Insert Proviso to section 7 after sub-section (1)

“Provided that in Scheduled Areas, every license shall be granted in such form as may be prescribed by the Gram Panchayat and on such conditions as may be prescribed by the Gram Sabha in consultation with the Gram Panchayat.”

Insert Proviso to Section 25 after sub-section (3)

“Provided that in Scheduled Areas, the rates of interest may be revised by the Gram Sabha periodically. The revised rates shall be publicised by affixing a notice on conspicuous places in the village, forwarding a copy to the money lenders in the village and to the Gram Panchayat.

Copies of the Order shall also be sent to the Gram Sabha concerned, Village and Taluka Panchayat within whose local jurisdiction the money lender’s principle place of business is situated.”



Insert Proviso to Section 39

“Provided that in Scheduled Areas, the Gram Sabha in consultation with the Gram Panchayat shall also have the power to formulate Rules for controlling money lending in Scheduled Areas.

Provided that the Rules passed by the State Government shall not be inconsistent with the Rules enacted by the Gram Sabha.”

Bombay Money-Lender’s Rules, 1959

Insert Proviso in Rule 5

“Provided that in case the area of operation of a money lender is a village, the Gram Sabha and Gram Panchayat shall discharge the functions of the Assistant Registrar under the Act within their respective jurisdictions”

Insert Sub-rule (1A) in Rule 10

“The licensing fee shall be deposited with the Gram Panchayat, in case the license is issued by the Gram Panchayat which shall be used for the development of villages.”

Insert Proviso to Rule 9

“Provided that in Scheduled Areas, the Gram Panchayat may either issue the license in form 1 given in the Rules or revise the format as it may deem fit.”

6.7 Control over local plans and resources for such plans including tribal sub plans

The Central PESA mandates: *“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 the power to exercise control over local plans and resources for such plans including tribal sub-plans.” [Section 4(m)(vii)]*

The Amendment to GPA has tended to vest powers at the Taluk Panchayat and Village Panchayat Level²³ as compared to the Gram Sabha. At the expense of the Gram Sabha, “Control over local plans and resources for such plans including tribal sub plans” is vested with Taluka Panchayat. The mandate under PESA on this aspect was empowering both the Panchayat at appropriate level and Gram Sabha. In order to rectify this situation, the following amendment shall be made to the GPA

²³ This aspect needs to be examined in light of the specific mandate under PESA for ensuring that “Panchayat at higher level do not assume the power and authority of any Panchayats at lower level or at Gram Sabha”.



Insert Sub-section (5) to Section 180, GPA

“In Scheduled areas the Gram Sabha along with the Panchayat at appropriate level within which such local plans including tribal sub plans are implemented shall have control²⁴ over such plans and their resources. Provided further that the state agencies shall facilitate implementation of all such plans and their budgets with the approval of the Gram Sabha and the Panchayat at appropriate level within which such local plans including tribal sub plans are implemented.”

7. Some General Observation in Gujarat Panchayati Raj Framework

The powers of the Gram Sabha, Village Panchayat, Taluka Panchayat and District Panchayats are made subject to Rules framed by the State government or any directions issued by any officer of the State Government from time to time. Thus for example, Section 274 of the GPA gives the State Government, the power to make rules without prejudice to the generality of the foregoing power. In Scheduled Areas, such a provision goes against the basic tenets of PESA and hence needs to be amended.

Insert Proviso to section 274

“Provided that for Scheduled Areas, no Rule or by-law framed by the State Government shall be inconsistent with PESA or shall restrict the powers by the Gram Sabha and Panchayat at appropriate level.”

It is interesting to note here that the general powers of all three tiers of PRIs have been made subject to the availability of funds with the respective tiers. The Act does not prescribe as to how different powers of the PRIs shall be accorded priority in case of paucity of funds. That has been left to the discretion of the PRI concerned.

²⁴ Control has to be detailed