



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

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 modernization 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 of socio-economic development
- 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 resettlement of person affected by such acquisition in scheduled areas.
- f. Prior mandatory recommendation for grant of prospective license or lease for mining of 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 sale and consumption of intoxicants
- 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 Rajasthan:

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. Rajasthan adopted PESA in 1999 by enacting the Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Act, 1999 (*hereinafter Rajasthan PESA*). Further, Rules, to implement PESA provisions have also been drafted in 2010 called Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010 (*hereafter Draft Rules 2010*). The Draft Rules though haven't been notified yet, it is important to analyse them as they reveal the current thought and understanding of the Government on PESA in particular and largely on Scheduled Area Governance.

A cursory reading of the legal framework reveals that the manner in which PESA provisions have been incorporated in, have been at variance with the letter and spirit of PESA. Rajasthan PESA, allocates the powers on some subject matters to Gram Sabha or Panchayat at appropriate Level or to the Gram Sabha only or to Panchayat at appropriate Level only. There are no powers that have been given to Gram Sabha and Panchayat at appropriate level. Besides, exercise of powers on certain subject matters by the local institutions has been made subject to Rules prescribed by the State government such as the *power to regulate or restrict the sale and*



consumption of any intoxicants subject to such Rules as may be made by the State Government in this behalf. PESA does not provide for any such condition.

Besides, parallel provisions exist in other state laws governing a subject matter of 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 Rajasthan 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 Rajasthan and our suggestions and recommendation on effective devolution of powers under PESA.

2. Provisions underlying the Basic Principles of PESA

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)]*

Following issues emerge in the implementation of this provision:

- 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 legislation.
- b. 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 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 in Rajasthan PESA.
- c. What are the traditional management practices of community resources? And what constitute community resources? A clear provision to document these in the Rajasthan PESA needs to be inserted. Further a clear definition (perhaps an inclusive definition of what includes a community resource is required).

The changes that are required to be carried out in the hereinafter Rajasthan PESA are as follows:

Rajasthan PESA

⁴ Section 9 Wildlife (Protection) Act, 1972

⁵ Section 11 Wildlife (Protection) Act, 1972



Insert clauses (i) and (ii) in section 3(b)

(i) “Every 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 Tribal 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.

(ii) The state government shall provide aid and assistance to Gram Sabha to carry out such documentation.

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 legislation including Rajasthan, while it copies the Central PESA does not delineate the next legal or operational steps of reconstituting the village as per PESA.

Three legal measures are important here:

i) 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.

ii) The Governor need to notify such villages at the hamlet or group of hamlet level in consultation with the respective hamlets whether they are comfortable with such an arrangement. Here the role of the Collector becomes important to carry out the administrative and legal responsibility. Infact 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.

iii) Further the use of the word “community” **[Section 4(b)]** without a clear definition gives conflicting signals whether such community includes all the members of the Gram Sabha or particular tribe or clan in such areas. This should be avoided and a clear provision may be added by replacing the word community and with adding “all the members of the Gram



Sabha or particular tribe(s) in that village who are managing their affairs in accordance with tradition and customs.

The state of Rajasthan has formulated the definition of village and the changes required as follows:

“A village for the purpose of this Act shall mean a village specified as such by the Governor, by notification in the official Gazette.” [Section 2(a), Rajasthan PESA]

In Rajasthan, there is no distinction between the constitution of village in Scheduled and non-Scheduled Areas. Rajasthan PESA, defines a village as ‘specified by the Governor through a notification. It may or may not be at a hamlet or group of hamlet level comprising of a community managing its affairs according to its traditions and customs, as mentioned in Central PESA. This definition needs to be amended to confirm to the parameters given in PESA.

Following Amendments in Rajasthan PESA, 1999 are suggested:

Rajasthan PESA, 1999

Delete Section 2(a) and instead, insert

“‘Village’ means a village in the scheduled areas which shall consist of a habitation or a group of habitations or a hamlet or a group of hamlets, comprising the majority tribal members within such village who manage their affairs in accordance with traditions and customs”.

Insert Section 2-A: Procedure for Constituting the Village

“Every such hamlet or group of hamlets constituting a village shall be notified by the Governor as follows-

The hamlet or the group of hamlets which are managing their affairs in accordance with traditions and customs shall submit 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 the office of the District Collector.

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

- The terms “Gram Sabha” and “Village” used throughout in the Act must make a clear reference to the village as defined in the Act by using words such as follows:
Every “such village shall have a Gram Sabha and “recognised as such by the concerned Panchayats within which such Village Gram Sabha exists” ...

Rajasthan PESA:



Gram Sabha in a scheduled area:-

“Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.” [Section 3(a)]

Insert Proviso to Section 3(a) *“Provided that such Gram Sabha shall be recognized by the respective Gram Panchayat within which such Gram Sabha exists.”*

Rajasthan Land Revenue Code, 1956

The Rajasthan Land Revenue Code, 1956 shall also be required to be amended to make provisions for making fresh entries in record of rights and other documents of Revenue department of PESA villages as notified by the Governor.

Insert in section 173-A in Rajasthan Land Revenue Code 1956

“The record of the revenue department for Scheduled Areas shall be revised in accordance with the villages as notified by the Governor as per the Provisions of PESA”

Since Rajasthan PESA does not make provisions for meeting, conduct of business in meetings, presiding officer, quorum, of Gram Sabha in Scheduled Areas, in that case the corresponding provisions of Rajasthan Panchayat Act will be applicable. For the sake of clarity on conduct of business of the Gram Sabha and for effective functioning, it is suggested that relevant provisions of the Panchayati Raj Act may be inserted in the Rajasthan PESA verbatim or with modifications if they are not in conformity with the spirit of PESA.

- **Presiding officer of the Gram Sabha:**

Rajasthan Panchayati Raj Act mandates that the meetings of the Gram Sabha shall be convened and presided over by the Sarpanch and in his absence by the Up-Sarpanch. In the event of both the Sarpanch and Up-Sarpanch being absent the meeting shall be presided over by a member of the Gram Sabha to be elected for the purpose by a majority of members present and voting. [Section 8C, Rajasthan Panchayati Raj Act, 1994]

Further, it is important to note that the Draft Rules, 2010 framed by the State Government to implement PESA provisions provide that the Secretary of Gram Panchayat shall be the Secretary of the Gram Sabha or Gram Sabhas and in whose absence, the Village Development Officer or any other Officer of the Gram Panchayat shall be nominated as the Secretary of Gram Sabha.⁶ Further, the quorum of the Gram Sabha shall be 1/10th of the total number of its members.⁷ The Sarpanch of the Gram Panchayat and in his absence Up Sarpancha shall convene the meeting of the Gram Sabha and in their

⁶ Rule 4, Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010

⁷ Rule 6, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



absence; the Gram Sabha shall nominate a member from amongst the members present to convene the meeting.⁸

In Scheduled Areas, it is likely that the involvement of an officer of the Gram Panchayat in the affairs of the Gram Sabha may hamper the autonomy and independence of the Gram Sabha in taking its decisions, which is the essence of the village self rule advocated in PESA. It is suggested that the meetings of the Gram Sabha shall be convened and presided over by a person chosen by a majority members of the Gram Sabha from amongst themselves. Following provisions may be inserted in Rajasthan PESA.

Insert Section 3(a-i) in Rajasthan PESA

“Meetings of the Gram Sabha shall be convened and presided over by such member of the Scheduled Tribes who is not Sarpanch or Up-Sarpanch or a member of the Panchayat, and such meetings shall be presided over by a respected person according to the customs and usage traditionally prevalent in such area such as Gram Pradhan or one known by any other name, or by a person unanimously elected by them by a majority vote.”

• **Meetings of the Gram Sabha:**

Rajasthan Panchayati Raj Act further states, *“there shall be at least two meetings of the Gram Sabha within a year, one in the first and other in the last quarter of the financial year, provided that upon a requisition in writing by more than one-tenth of the total number of members of the Gram Sabha, or of required by the Panchayat Samiti, Zilla Parishad or the State Government, a meeting of the Gram Sabha shall be held within fifteen days of such requisition and requirement.* [Section 8-A(2), Rajasthan Panchayati Raj Act, 1994]

The Draft PESA Rules, 2010 also mention a procedure for conducting the meetings of the Gram Sabha, passing resolution and quorum among others. Thus for example, the meeting of the Gram Sabha shall take place in an open area. Further, no decision shall be taken if the requisite quorum is not complete. The authorised officer of the Panchayat Samiti shall be present in the meeting of the Gram Sabha and shall be responsible for the proper conduct of business. At the end of the meeting the decision taken in the meeting shall be read out aloud and then shall be approved and signed by all the members present. A copy of the resolution thus passed shall be sent to the Gram Panchayat.⁹ Further, the quorum of the Gram Sabha shall be 1/10th of the total number of its members.¹⁰ Besides, Procedure have also been given for calling the meeting of the Gram

⁸ Rule 7, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

⁹ Rule 5, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

¹⁰ Rule 6, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



Sabha,¹¹ publication of notice, convening special meetings¹² and joint meetings of several Gram Sabhas.¹³

Since the above provisions have not been notified yet, they are not legally binding, To bring in more clarity, it is suggested that, in the functioning of Gram Sabha in Scheduled Areas, the following provisions should be included in Rajasthan PESA with slight amendments as given below

Insert Section 3(a-ii) in Rajasthan PESA

“There shall be at least three meetings of the Gram Sabha within a year within a gap of three months.

Provided that, if the Gram Sabha requires more number of meetings can be held within a year.

Provided that a special meeting of the Gram Sabha may be convened by the Gram Sabha Head at the requisition of more than one-tenth of the total number of members of the Gram Sabha; or by the Gram Panchayat, Panchayat Samiti, Zilla Parishad or any officer of the State Government. A meeting of the Gram Sabha shall be held within fifteen days of such requisition and requirement.”

- **Resolution of the Gram Sabha**

Insert Section 3(a-iii)

“Any resolution of the Gram Sabha related to the functions entrusted to it shall be read out at the end of the meeting, passed by a majority of votes of the members present and voting and signed by the Convenor of the Gram Sabha.”

- **Quorum of the Gram Sabha**

Insert section 3(a-iv)

“The quorum of the meeting of the Gram Sabha shall be one –tenth of total number of its members, out of which one third shall be women.”

- **Dispute between two Gram Sabhas**

There is no provision in the Panchayati Raj Act or in Rajasthan PESA procedure for resolution of disputes between two or more Gram Sabhas. However, the Draft PESA Rules, provide for the constitution of a Peace Committee in every village which shall strive to maintain good relations with the neighbouring villages, investigate incidents which create disharmony between villages and submit its

¹¹ Rule 8, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

¹² Rule 9, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

¹³ Rule 10, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



findings to the Gram Sabha. The Gram Sabha shall file a complaint with the magistrate.¹⁴

It is suggested that the magistrate may not be involved in resolving the disputes of the Gram Sabha in the first instances and Gram Sabhas may be given the opportunity to resolve their differences with mutual consultation. Therefore it is suggested that along with the aforementioned provisions of the Draft Rules, the following is may added in the Rajasthan PESA.

Insert Section 3(a-v)

“If there is a dispute between two or more Gram Sabha, the dispute would be resolved jointly by the Gram Sabha by mutual consultation. If the Gram Sabhas are not able to resolve the dispute jointly then the dispute may be referred to the Collector or any other competent authority as may be prescribed by the state government and the decision of the state government thereto shall be final.”

2.3 Traditions, Customs, customary resources and traditional methods of dispute resolution:

- While the assertion of the Act that the Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution deserves praise, but what constitute “community resources” (as explained earlier) and what are the accepted customary modes of dispute resolution or atleast the principles that are used for the adjudication in a traditional mode must be laid down or documented to avoid any confusion. A clear provision in the state law to this effect must be incorporated.

Issues:

1. Documenting the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
2. Issuance of directives by the state government to preserve the traditional and customary ethos.

Rajasthan PESA as per Section 3(b) endows upon the gram sabha the function to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution.

Note that, Draft PESA Rules, 2010 also make elaborate provisions for resolution of disputes as per the customs and practices of the Gram Sabha. A Peace Committee shall be formed by the Gram Sabha from amongst its members to assist the Gram Sabha in resolving disputes.¹⁵ In

¹⁴ Rule 12, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

¹⁵ Rule 14, 15, 16, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



addition the Draft Rules also mention the principles which the Gram Sabha need to adopt while managing and preserving its community resources, such as the Community resources should be managed in a way which ensures livelihood of the people or which promotes a feeling of equality amongst the members among others.¹⁶

The provisions are progressive and in conformity with PESA. To strengthen the framework following amendments may be inserted.

Section 3(b) shall be further amended as follows:

Insert the word “protect” in Section 3(b)

3 (b) to safeguard, ‘protect’ and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution

Every 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 Tribal 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.

Insert sub clause (i-a) in Section 3(b)

(i-a) “Every Gram Sabha shall document the customary modes of dispute resolution and/or the general principles that are followed within such customary modes in their respective jurisdiction and such customary modes dispute resolution shall have precedence over other practices as long as they are within the constitutional mandate on similar dispute resolution methods . Such documentation shall be carried out with the aid of State Tribal 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”

(ii) The state government shall provide aid and assistance to Gram Sabha to carry out such documentation.

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; common water bodies 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.”

¹⁶ Rule 17, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



3. Powers Exclusive to the Gram Sabha

The Central PESA gives three exclusive powers to the Gram Sabha- (i) *approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat;* (ii) *selection of beneficiaries for poverty alleviation programs;* (iii) *issuing of utilization certificate.* Each of these functions have been analysed in detail below.

3.1 Approve the plans, programmes and projects for social and economic development:

Central PESA: “*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*”

Rajasthan PESA, vests the power to approve plans, programs and projects for social and economic development before, such plans, programs and projects are taken up for implementation by the Panchayat. [Section 3(c)(i)]

Rajasthan PESA

Insert sub-clauses in Section 3(c)(i)

(i-a) “*Each Gram Sabha shall decide criteria for approval of every plans, programs and projects for social and economic development that are 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. Every such plan, program and project shall be approved by such Gram Sabha (s) accordingly.*”

(i-b) *For development plans drawn up by the Panchayat, a mandatory consultation with the Gram Sabha shall be organized by the Gram Panchayat for assessing the social and economic development needs of the village. Thereafter plans and programs addressing the needs of the village will be prepared by the Gram Panchayat under the supervision of Panchayat Samiti and Zilla Parishad and approval of the Gram Sabha shall be taken before they are executed.*”

3.2 Identification or selection of persons as beneficiaries under the poverty alleviation and other programmes:

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)]

Rajasthan PESA endows the Gram Sabha with the following power and function:

“Every Gram Sabha shall be responsible for identification and selection of persons as beneficiaries under poverty alleviation and other programs” [Section 3(c)(ii)]



In order to strengthen this provision the following may be included:

Rajasthan PESA

Insert Explanation to Section 3(c)(ii)

Explanation-“The Gram Sabha shall decide the criteria for identifying such beneficiaries which shall be duly recognized by the Panchayat within which such Gram Sabha exists.”

3.3 Certificate of utilisation of funds:

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

Rajasthan PESA with regard to certification of utilization the following provisions are mentioned:

“Every Panchayat shall be required to obtain from the Gram Sabha a certificate of utilization of funds by that Panchayat for the plans, programs and projects referred to in clause (c).” [Section 3(d)]

To strengthen this power of the Gram Sabha further, Gram Sabha may also be given the power to develop the format for the utilization certificate. Following amendments are suggested.

Insert clause in section 3(d)

3(d-i) “Gram Sabha shall develop a format for granting utilisation certificate which shall be formally recognised as such by the respective Panchayat within which such Gram Sabha exists.”

A Format for UC has been given below for reference:

Format of Utilization certificate as given in GFR, 2005 modified for use by Gram Sabha

FORM (Utilization Certificate)

Amount:

Total:

Certified that we the Gram Sabha of Village _____ have satisfied ourselves 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 favor of For utilization towards construction _____ 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(Gram Sabha of _____village)

Date

Note: If the form as given above is accepted then the provision of section 3(d-i) shall be deleted.

3.4 Ward Sabha: Functions, powers similar to Gram Sabha

In Rajasthan, the territorial jurisdiction of a Panchayat or a Panchayat circle is divided into such number of Wards by the State Government, so that the population in each ward is almost same.¹⁷ Each Ward has a Ward Sabha comprising of all adult persons in that Ward.¹⁸ Ward Sabhas have been entrusted many functions such as, identification and selection of beneficiaries for implementation of development schemes in the area of the Ward, formulating schemes and fixing priority for implementation of development schemes in the ward, exercising checks on functionaries in social sectors among others.¹⁹ Many similar functions have also been entrusted to the Gram Sabha (s) within the area of a Ward. In Scheduled Areas, as mentioned above, villages are constituted on the basis of traditions and customs of the people on a hamlet and group of hamlet level and every village has a Gram Sabha. It is likely that in a Ward area, there will be several villages and several Gram Sabhas functioning. Clearly, there will be overlapping of functions of the Gram Sabha(s) and Ward Sabha(s). Therefore, for the Gram Sabhas to function as independent bodies to control and manage the resources of the village, as mandated by PESA, therefore, there should not be Ward Sabhas in Scheduled Areas. Following amendments are suggested:

Insert proviso in Section 3(1) of Rajasthan Panchayati Raj Act, 1994

“provided that in Scheduled Areas, no Ward Sabhas shall be constituted”

¹⁷ Section 12(2), Rajasthan Panchayati Raj Act, 1994.

¹⁸ Section 3(1), Rajasthan Panchayati Raj Act, 1994.

¹⁹ Section 7, Rajasthan Panchayati Raj Act, 1994.



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)]*

Rajasthan PESA provides that;

“Planning and management of minor water bodies, as may be specified by the State Government, in the Scheduled Areas shall be entrusted to Panchayati Raj institutions at such level as may be prescribed” [Section 3(h)]

Administrative Response on Minor Water Body:

Notification of 2001, Irrigation Department

The Irrigation Department of Rajasthan issued a notification in 2001,²⁰ whereby, control over those water bodies which have the capacity to irrigate a command area of 80 hectares shall be given to the Gram Panchayat and Panchayat Samiti.

- The Department shall, inform the Gram Panchayat and Panchayat Samiti about the water bodies under their control. Gram Panchayat/Panchayat Samiti, in order to assume control over the water bodies assigned by the Irrigation Department, shall pass a resolution to this effect and shall send it to the Irrigation Department.
- Where two or more Gram Panchayats have jurisdiction over a water body, Panchayat Samiti shall assume its control.
- Further, income generated from the water bodies such as from levy of irrigation tax, fisheries, sale of water other than for irrigation purpose, singhara cultivation, sale of drift timber among others shall be deposited in the funds of Gram Panchayat or Panchayat Samiti as the case may be. Such income shall be used for the maintenance of the water body, payment of salaries of the staff involved in upkeep of the water bodies.
- In future, the management and functioning of such water bodies shall be done by the Gram Panchayat or Panchayat Samiti through Water User Associations.
- At the request of the Gram Panchayat/ Panchayat Samiti, the Irrigation Department shall provide all technical support related to the upkeep and management of the water body.
- Also, along with the minor water body, all machinery, tools, implements and human resource necessary for its upkeep shall also be assigned to the Gram Panchayat/ Panchayat Samiti.

Circular of 2002, Irrigation Department

Irrigation Department issued another circular in 2002, where the department has attempted to delineate the power to plan and manage water bodies amongst the three tiers of Panchayat.

Functions of the Gram Panchayat

²⁰ Notification No. F-6/TA SS/Part-II/253, Dated, February 13, 2001. Irrigation Department, Rajasthan.



- In the regular meeting of the Gram Panchayat, activities undertaken for the management of water bodies shall be reviewed. The staff of Irrigation Department involved in upkeep of the water bodies shall compulsorily participate in such meetings. Gram Sewak shall present a report to the Gram Panchayat in every meeting.
- In the meetings of the Gram Sabha/Ward Sabha, the staff of irrigation department associated with the management of the water bodies under the control of Panchayat shall be present to inform the Gram Sabha/ Ward Sabha about the management of the water bodies. The staff will also formulate schemes for the proper use and management of water bodies.
- A committee for Rural Area Development and Upliftment at the level of Gram Panchayat shall be constituted to for development of agriculture, animal husbandry, minor irrigation, rural enterprises among others.
- If the Gram Panchayat feels that any person involved in the management of a water body in Gram Panchayat area, is negligent in performing his duties, the Gram Panchayat shall inform the Panchayat Samiti through a resolution. The Panchayat Samiti in consultation with the Irrigation department shall take appropriate action. Gram Sewak shall send a report in this regard, every month to the Vikas Adhikari.

Functions of Panchayat Samiti:

- In the ordinary meeting of the Panchayat Samiti, issues regarding improvement and proper management of water body of 200 acre or 80 hectares shall be discussed. Any appointed district level officer of the Irrigation department shall present a progress report on the development work of water bodies, in the meeting.
- At the Panchayat Samiti level, a committee for Rural Development and improvement of rural enterprises shall be constituted. Atleast one meeting of this committee shall be called every three months, where issues related to the development of water bodies shall be discussed in detail.
- Staff of Irrigation Department carrying out the management of water bodies in Panchayat Samiti area shall compulsorily participate in the meeting of the Panchayat Samiti and present a progress report on the activities.
- Irrigation Department shall prepare an annual plan for the development of the water body in consultation with the Panchayat Samiti.
- Zilla Parishad shall be informed by the Panchayat Samiti through a resolution, if the Samiti is dissatisfied with the functioning of the staff of Irrigation department about management of water bodies within its jurisdiction.
- Vikas adhikari shall prepare a monthly progress report on the activities of the Panchayat Samiti and submit it to the Zilla Parishad.

Functions of the Zilla Parishad

- In the regular meeting of the Zilla Parishad, the staff of Irrigation department involved in planning and management of water body of 200 acres, shall present an agenda which will be discussed in detail.
- At the Zilla Parishad level a Committee for Rural Development and Production shall be constituted for carrying out schemes related to agriculture, animal husbandry, self



employment and rural enterprises among others. The committee shall meet at least once in every three months and discuss about the management of the water body.

- A copy of the annual plan prepared by the Zilla Parishad in consultation with the Panchayat Samiti shall be obtained. Strategy for implementation of the plan shall be decided in consultation with the Zilla Parishad.

Notification of 2004, Panchayati Raj Department

A notification has been issued by the Panchayati Raj Department in 2004, where the income generated from *singara and kamal jhad* growing in the water body is vested in the Panchayati Raj Institution.

Legal Issues:

- In Rajasthan, planning and management of a water body from 80- 300 hectares is entrusted to the PRI. Although, no definition is available of a minor water body, it can be safely assumed that a water body upto 300 hectares can be construed as a minor water body in Rajasthan.
- The executive instructions issued in 2001 and 2002 by the irrigation department, vest the power of planning and management of water bodies upto 80 hectares in the PRI and prescribe specific functions of the Gram Panchayat, Panchayat Samiti, Zilla Parishad and Irrigation Department in planning and management of such water bodies. However, the functions have not been clearly demarcated. Thus for example, the activities falling within the terms ‘planning and management’ have not been specified. Also, the key responsibility of preparing annual plans for the development of minor water bodies is with the Irrigation Department. The role of Panchayat Samiti is only advisory. Besides there is no role of the Gram Sabha and Gram Panchayat in the planning process. In our view, Gram Sabha should be given a key role in planning and management of minor water body in a Scheduled Area with requisite assistance from the PRI.
- Also, the decisions taken on improving planning and management of water bodies in the meetings of Gram Panchayat, Panchayat Samiti and Zilla Parishad is not binding on the Irrigation Department. In the scenario, the control given to PRI is ineffective.
- The actual work of upkeep of water bodies and implementation if development schemes are carried out by the staff of irrigation department and there is no direct involvement of the members of the Gram Sabha or the PRI. However, in our view, the planning process and executions of those plans should begin at the Gram Sabha level with requisite administrative and technical support from the PRI and Irrigation Department.
- The notification also does not mention the manner in which activities of other departments and Associations such as Fisheries department, water user associations shall be integrated in the planning and management of minor water bodies by the PRI.
- The notification of 2004 issued by Panchayati Raj Department vests the income generated from the growth of kamal jhad and Singhara in a water body having an irrigable command area of 300 hectares in the Panchayati Raj Institutions. The



notification does not state how will this income be distributed within the three tiers of Panchayat.

- PRI in Rajasthan has been assigned control over a water body of upto 300 hecraes of command area. However, in the latest circular there is no mention of how will the planning and management of a water body from 80 to 300 hectares will be carried out by the PRI.

Therefore, to strengthen the legal framework on planning and management of minor water bodies in Rajasthan, the following amendments are suggested:

Rajasthan PESA

Insert Subsection in Section 2

Minor Water Body, “shall mean any water body upto 300 hectares.”

Delete provisions of Section 3(h) and instead insert the following

“(i) Planning and management of minor water bodies within the jurisdiction of a village shall be carried out by the Gram Sabha,

Planning and management of minor water bodies within the jurisdiction of two or more villages, shall be carried out by the Gram Panchayat.

Planning and management of minor water bodies within the jurisdiction of two or more Gram Panchayats, shall be carried out by the Panchayat Samiti.

Planning and management of minor water bodies within the jurisdiction of two or more Panchayat Samitis shall be carried out by the Zilla Parishad.”

Provided that the Water User Associations and other voluntary groups involved in planning and management of water bodies in Scheduled Areas shall function as per the instructions of the Gram Sabha and respective Panchayat with regard to all acts of planning and management of minor water bodies.”

Explanation I: Planning of minor water bodies shall also include planning and construction of a new water body

Explanation II: 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.

The Rajasthan Irrigation and Drainage Act, 1954

Irrigation Act defines irrigation works to include any canal, channel, pipe or reservoir, constructed, maintained or controlled by the state government for the supply or storage of water, any other water course used for the purpose of irrigation.²¹ Irrigation works are constructed, maintained and controlled by the State Government.²² Besides, water supply is also regulated by the Irrigation department. All these functions overlap with the planning and management of

²¹ Section 3(ii), Rajasthan Irrigation and Drainage Act, 1954.

²² Section 14-30, Rajasthan Irrigation and Drainage Act, 1954.



minor water bodies entrusted to the PRI in PESA. Besides, the Irrigation Act does not distinguish between the Scheduled and Non Scheduled Areas, and Panchayats have not been given any role in the development and upkeep of the irrigation works within the villages. Therefore, there is a need to carefully examine the Act and suggest appropriate amendments to bring it in conformity with central PESA and Rajasthan PESA.

Apart from this, there are several other legislations which also deal with use of water bodies for various purposes, supply of water, management of water resources among others such as Rajasthan Fisheries Act, 1952, Land Special Irrigation Charges Act, 1953 and Minor Irrigation Works Act, 1953. These legislations also do not take into account the powers vested in Panchayats under PESA, therefore amendments needs to be incorporated in these legislations as well.

The Rajasthan Irrigation and Drainage Act, 1954

Insert Subsection in Section 3

Minor Water Body, “shall mean any water body upto 300 hectares.”

Insert Part XI- Provisions for Scheduled Areas

Section 61- *“Notwithstanding anything contained in any part of this Act and Rules thereunder, the provisions of this Part or any other law for the time being in force shall apply to Scheduled Areas of the Rajasthan.”*

Section 62 *“(i) Planning and management of minor water bodies within the jurisdiction of a village shall be carried out by the Gram Sabha,
(ii) Planning and management of minor water bodies within the jurisdiction of two or more villages, shall be carried out by the Gram Panchayat.
(iii) Planning and management of minor water bodies within the jurisdiction of two or more Gram Panchayats, shall be carried out by the Panchayat Samiti.
(iv) Planning and management of minor water bodies within the jurisdiction of two or more Panchayat Samitis shall be carried out by the Zilla Parishad.”*

Provided that the Water User Associations and other voluntary groups involved in planning and management of water bodies in Scheduled Areas shall function as per the instructions of the Gram Sabha and respective Panchayat with regard to all acts of planning and management of minor water bodies.”

Explanation I: Planning of minor water bodies shall also include planning and construction of a new water body

Explanation II: 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.

Section 62

“Gram sabha and Panchayat at appropriate level shall have the power to prescribe the usage of



water for specific purposes from any minor water body within its jurisdiction.

Provided that no irrigation officer shall grant permission for the usage of water from any minor water body or irrigation and related purposes without the prior written approval of the Gram Sabha or the Panchayat at appropriate level or both as the case may be within whose jurisdiction the minor water body falls.”

Section 63

“No work of repair, restoration for maintenance of a minor water body shall be carried out by the Irrigation Department without the prior written approval of the Gram Sabha or the Panchayat at appropriate level or both as the case may be”

Section 64

“All applications for the maintenance of existing irrigation works, construction of new irrigation works upto 200 acres or any other work shall be made to the Gram Sabha within whose jurisdiction the proposed work is to be carried out.”

Section 65

“Gram Sabha shall have the power to regulate supply of water and levy water tax for the use of water from an irrigation work within its jurisdiction.

Panchayat at appropriate level shall have the power to regulate supply of water and levy water tax for the use of water from an irrigation work within their respective jurisdictions.

Provided that the Gram Sabha or Panchayat at appropriate level as the case may be shall also levy penalty on any person who wastes water, destroys the irrigation work, pollutes the water body uses water in excess of the allowed limit or does any other act in contravention of the Rules framed by the Gram Sabha or Panchayat at appropriate level for management of irrigation works within its jurisdiction.”

Section 66

“Gram Sabha and Panchayat at appropriate level shall prepare such schemes and Plans in the first month of every financial year for the upkeep and management of irrigation works. The schemes or plans formulated by the Gram Sabha shall be forwarded to the Gram Panchayat, those formulated by the Gram Panchayat shall be forwarded to the Panchayat Samiti and those formulated by the Panchayat Samiti shall be forwarded to the Zilla Parishad. Provided that all annual plans formulated shall also be forwarded to the Irrigation Department.

Provided that any plans formulated by the Irrigation Department shall not be in contravention of the plans formed by the Gram Sabha and Panchayat at appropriate level.”

Section 67

“Gram Sabha and Panchayat at appropriate level shall make such Rules for the management of irrigation work within its jurisdiction, prohibiting certain activities, prescribing procedure for obtaining permission for carrying out construction, repair, for usage etc., tax for usage of water, penalty for contravention of provisions of this part and for such other matters as the Gram Sabha and Panchayat at appropriate level deem necessary.”

Rajasthan Irrigation and Drainage Rules, 1955

Insert Rule 59



“In Scheduled Areas, the application for the use of water or for construction of a new water course shall be made in Form prepared by the Zilla Parishad to the Gram Sabha and the Panchayat at appropriate level by any person or by the Irrigation Department. The Gram Sabha or Panchayat at appropriate level as the case may be shall pass a resolution accepting or rejecting the application. Gram Sabha and Panchayat at appropriate level shall also prescribe the tax for use of water. In case of construction of a new water body, Gram Sabha or Panchayat at appropriate level may prescribe the place of construction.

The Resolution shall be sent to the Panchayats and Irrigation Department as per the provisions of Section 66, within 30 days of its passing.

Insert Section 59-A

Gram Sabha concerned shall also be informed of any resolution passed by any of the tiers of panchayat regarding minor water bodies within its jurisdiction.

The Rajasthan Minor Irrigation Works Act, 1953

Insert Section 50

In Scheduled Areas, planning and management of minor irrigation works upto 300 hectares shall be carried out by the Gram Sabha and Panchayat at appropriate level as per section 3(h) of Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Act, 1999.

Explanation I: Planning of minor water bodies shall also include planning and construction of a new minor irrigation work.

Explanation II: 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.”

The Rajasthan Minor Irrigation Works Rules

Insert Proviso in Rule 3

“Provided that in case of a minor water body upto 300 hectares any of the above Acts shall be carried out by the Gram Sabha or the Gram Panchayat, Panchayat Samiti and Zilla Parishad as the case may be for minor water bodies falling within their respective jurisdiction.”

The Rajasthan Lands Special Irrigation Charges Act, 1953

Insert Section 16

“No charge under this Act, shall be levied on a water body upto 300 hectares within a Scheduled Area, without prior, written approval of the Gram Sabha or the Panchayat at appropriate level within which the concerned water body falls.

Provided that 20 percent of the amount collected from levy of special charges within this Act shall be deposited in the funds of the Gram Sabha or the respective Panchayat.”

The Rajasthan Fisheries Act, 1953

Insert definition of minor water body in Section 2

Minor Water Body, “shall mean a water body upto 300 hectares”

Insert Section 6-A



“In a Scheduled Area, no license under this Section for fishing in a minor water body shall be granted without prior, written approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the concerned minor water body is located.

6-A (i) Application shall be made to the Gram Sabha or Panchayat at appropriate level as the case may be, in a prescribed form for fishing. The Gram Sabha or Panchayat at appropriate level shall within 30 days of receiving the application shall pass a resolution approving, rejecting or specifying such conditions as may be necessary and shall forward a copy to the Fisheries Department within 30 days.

6-A(ii) While approving the application, the Gram Sabha or Panchayat at appropriate level may impose a license fee which shall be deposited in the funds of the Gram Sabha or Panchayat at appropriate level at the case may be, prescribe such conditions for the use of minor water bodies, prohibiting certain activities which pollute or any other condition.

6-A (iii) Upon receiving the resolution the Licensing authority shall issue a license prescribing the terms and conditions imposed by the Gram Sabha or Panchayat at appropriate level.

6-A (iv) The Gram Sabha shall also maintain a register to record such particulars including, name, address of the licensees carrying out fishing in the Gram Sabha along with the terms of license, expiry date, license fee any penalty imposed etc.”

5. Powers to 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:

- i) the gram Sabha or the Panchayats at the appropriate level shall be **consulted** before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level; [Section 4(i)]*
- ii) Rajasthan PESA states that Gram Sabha or Panchayati Raj Institution at such level as may be prescribed by the State Government shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling and rehabilitating persons affected by such projects in the Scheduled Areas, the actual planning and implementation of the projects in Scheduled Areas shall be coordinated at the State level. [Section 3(g)]*

Draft PESA Rules, 2010 also provide the procedure in which recommendation of the Gram Sabha is to be taken before Acquisition of land in Scheduled Areas. Gram Sabha shall be given requisite information about the acquisition, its impact on the livelihood of people and natural resources of the village and compensation to the affected persons. After considering all the information submitted, it shall make recommendations to the Government for resettlement and



rehabilitation of affected persons. These recommendations are however, not binding on the Government and the Government may accept or reject them fully or partially.²³

Three legal questions 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?
- The state government has not come up with any such prescription as of now. In the absence of a clear direction, the power remains ineffective.

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

- First, the term “Consultation needs to be defined on the lines of “Free, Prior and Informed Consent (FPIC) affirmed by international law and standards²⁴”
- Second, Rajasthan PESA should be amended to include a provision which mandates consultation with the Gram Sabha mandatory in case of acquisition of land in Scheduled Areas and also before any resettlement or rehabilitation that takes place in such scheduled areas.

Rajasthan PESA

Rephrase Section 3(g) of Rajasthan PESA as:

3(g) “Prior consultation with the Gram Sabha is mandatory in case of acquisition of land and also before finalization of any resettlement or rehabilitation scheme for displaced persons affected by such projects.

Provided that Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions National Rehabilitation and Resettlement Policy, 2007 the time a new legislation is passed by the Central or State Government.”

Insert Section 3(g-i)

“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.”

Insert Explanation to Section 3(g)

²³ Rule, 18, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

²⁴ 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.



“For the purposes of this Act, Consultation with its cognate and grammatical variations shall mean publicizing 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.”

Thirdly, similar enabling provisions may be inserted in Land Acquisition Act, 1894 as applicable in Rajasthan to make it consistent with PESA and Rajasthan PESA.

Rajasthan Land Acquisition Act, 1953 has been repealed vide The Land Acquisition (Amendment) Act, 1987, hence the Land Acquisition Act, 1894 (Central Act) is applicable to land acquisition and compensation in the State. The Act does not make provisions for Consultation of the Gram Sabha or Panchayat at appropriate level before acquisition of land in Scheduled Areas in accordance with PESA. Therefore, it needs to be amended accordingly

The Rajasthan Land Acquisition (Amendment) Bill 201...

Insert Sub section 4(1-A)

“In Scheduled Areas, no operation under this section shall be carried out without taking a written permission from the Gram Sabha(s).”

Insert proviso to Section 5-A -,

“provided that in case of acquisition in Scheduled areas, the Collector shall convene a meeting of the Gram Sabha as per proviso to section 3(a-ii) of Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999 and carry out a consultation process with the Gram Sabha on the proposed acquisition. The Collector shall explain to the Gram Sabha in local language, the particulars of the acquisition proposal, 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 ask. The Gram Sabha through a resolution, accept, reject or modify the proposal. The resolution shall be sent to the Gram Panchayat within 15 days of its passing.”

Insert Section 5-B

“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 in Rajasthan is passed.”

Insert Explanation to the proviso of Section 5-A

Explanation; “Consultation with its cognate and grammatical variations shall mean publicizing 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.”



Insert proviso to Section 6

“provided that in case a land is acquired in Scheduled Areas, no declaration under this Section shall be issued without carrying out prior Consultation with the Gram Sabha as per proviso to Section 5-A.”

Insert Proviso to Section 7

“Provided that in case a land is acquired in Scheduled Areas, no order under this section shall be issued if a process of consultation as per proviso to section 5-A has not taken place.”

Insert Section 10-A

“Provided that the provisions of section 9 and 10 shall not be applicable to land acquisition in Scheduled Areas”

Insert Subsection (5) in section 11

“In case of acquisition of land in Scheduled Areas, all procedures related to payment of compensation or implementation of resettlement and rehabilitation package approved by the Gram Sabha in the Consultation carried out as per proviso to Section 5-A of this Act, shall be duly completed before the proposed land is acquired. The Gram Sabha along with the Gram Panchayat and the Collector shall ensure that due compensation promised to all persons is paid and resettlement and rehabilitation of all affected persons in complete before the Government proceeds to acquire the land.”

Insert proviso in Section 17(1)

“provided that in Scheduled Areas, if the Government takes a decision to acquire the land in case of an urgency, a meeting of the Gram Sabha(s) shall be called within one week of issuing a public notification under Section 4. The proposal explaining the urgency along with particulars of compensation and a temporary and permanent resettlement and rehabilitation package for the affected persons shall be kept before the Gram Sabha in local language. The Gram Sabha shall pass the resolution accepting the proposal or with modifications if it deems necessary. The government shall provide for temporary facility for rehabilitation and resettlement of affected persons.”

“Provided further that, within three months of the acquisition of land, the Government shall, begin the work of permanent resettlement and rehabilitation of affected persons promised to the Gram Sabha (s) under the provisions of the first proviso to section 17(1). All such works shall be finished within one year of passing the resolution by the Gram Sabha. The Gram Sabha, along with the Gram Panchayat and the Collector shall monitor the activities of resettlement and rehabilitation.”

Insert Section 23(3),

“In case of a dispute regarding land acquisition in Scheduled Areas, in addition to the above mentioned factors, the Court shall also take into account customs and practices of the affected persons, the rights exercised by the people over the land, livelihood needs of the people and various other factors as it deems necessary, while deciding the amount of compensation.”



In addition, the Government also has the power of requisition of land for improvement of Agriculture through the provisions of the Rajasthan Requisitioning of Land (Improvement of Agriculture) Act, 1951. The Act does not make a distinction between scheduled and non scheduled areas and hence is inconsistent with PESA. Following amendments are suggested:

Insert Section 18 in Rajasthan Requisitioning of Land (Improvement of Agriculture) Act, 1951

Section 18; “In Scheduled Areas, any requisition of land shall take place according to the procedure prescribed in first proviso to Section 5-A and Section 5-B of the Rajasthan Land Acquisition (Amendment) Act, 201..”

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 also 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))

The Rajasthan PESA provides; “no prospecting licenses or mining leases for minor minerals in Scheduled Areas shall be granted to any person or body of persons without obtaining prior recommendations to the Gram Sabha or the Panchayati Raj Institutions at such levels as may be prescribed”[Section 3(i), Rajasthan PESA]

The Act further provides:

“No concession for exploitation of minor minerals by auction in the Scheduled Areas shall be granted without obtaining the recommendation of the Gram Sabha or the Panchayati Raj Institutions at such levels as may be prescribed”[Section 3(j), Rajasthan PESA]

There are three requirements as per PESA on the issue of minor minerals

- Recommendation of Gram Sabha or Panchayat at appropriate level
- Before grant of prospecting licence for minor mineral.
- Recommendation of Gram Sabha or Panchayat at appropriate level or before grant of mining lease for minor minerals.
- Recommendation of Gram Sabha or Panchayat at appropriate level before grant of concession for the exploitation of minor minerals by auction.

Rules under Rajasthan PESA for obtaining recommendation of PRI:



Government of Rajasthan has also made Rules in 2002²⁵ prescribing the procedure for obtaining recommendation of the Panchayati Raj Institution for grant of mineral concessions in respect of minor minerals. The Rules provide that recommendation of for grant of any concession for exploitation of minor minerals shall be made by the Gram Panchayat for the area falling within its jurisdiction or by Panchayat Samiti in case the area falls within the jurisdiction of two or more Gram Panchayats or by Zilla Parishad where the area falls within the jurisdiction of more than one Panchayat Samiti.²⁶

Further Rule 3 provides that, the mining engineer shall send to the recommending authority a copy of the proposal along with a plan of the area with a revenue map describing the location of the area. The recommending authority on receipt of the proposal shall convey its recommendations within 30 days. The recommending authority may reject the proposal also and communicate its stance along with reasons for rejection to the mining engineer in writing.

Note that the **Draft PESA Rules, 2010**, prove that the Panchayat at appropriate level as prescribed in the Rules have the right to make recommendations on the mining proposal to the Competent Authority.²⁷ The Government has not provided for any role of the Gram Sabha which will be directly affected by the mining activity in the village. This is not in conformity with PESA.

Legal Issues and Recommendations

- In Rajasthan, the Rules to Rajasthan PESA vest the power to recommend in the Panchayat at appropriate level in a manner prescribed in the Rules. 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”***.
- The power of free and prior informed consent prior should ideally be vested in the Gram Sabha, as, the village community will be directly impacted by the mining of minor minerals in the village. Also, PESA envisages the Gram Sabha as the custodian of the natural resources of the village, therefore, it must have a right to regulate, approve, and prohibit any activity in the village which has impact on the life and livelihood of its people

Following amendments are suggested:

Rajasthan PESA

Replace the provisions of Section 3(h) with:

(i) “The Free, prior and informed consent of the Gram Sabha or Gram Sabhas in case the proposed area for lease falls within the jurisdiction of two or more Gram Sabhas, shall be

²⁵ Rajasthan Panchayati Raj (Modification of Provisions in their Application to Scheduled Areas) Rules, 2002, issues vide Notification No. F 4(10) PRD\Law\Sdl. Aera. Act\95\Part II\13\2, Jaipur Dated 20.6.2002.

²⁶ Rule 2, Rajasthan Panchayati Raj (Modification of Provisions in their Application to Scheduled Areas) Rules, 2002.

²⁷ Rule 27 and 28, Rajasthan Panchayati Raj (Modification of Provisions in their Application to Scheduled Areas) Rules, 2010.



made mandatory prior to grant of prospecting licenses, mining leases, quarry license for exploitation of minor minerals or for concessions for exploitation of minor minerals by auction, in the Scheduled Areas.”

Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicizing 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 Sasan, formal written consent of the Gram Sasan after providing full and prior information about the mining/quarrying proposal and its impact on livelihood and conservation.

“Provided that every application for renewal or transfer of mining leases, or quarry license, or for concession shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha(s) is mandatory.

(ii) The Gram Sabha shall have the authority to accept or reject the application for prospecting license, mining leases, quarrying licenses 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”

Replace provisions of Section 3(i) with

(i) The Gram Sabha(s) shall maintain a record of prospecting licenses, mining leases, quarry licenses and concessions for exploitation of minor minerals by auction for which consent has been given.

(ii) On the request of the Gram Sabha, the Gram Panchayat, Panchayat Samiti and Zilla Parishad shall render necessary assistance to the Gram Sabha in carrying out its function under this section and Rajasthan Minor Mineral Concession Rules, 1986.

Rajasthan Minor Mineral Concession Rules, 1986

In addition, Rajasthan Minor Mineral Concession Rules also grant powers to the Mines and Geological department in the state to regulate supervise and control mining rights in respect of minor minerals. In particular, the department performs among others the following functions:

- approves granting of mining leases and quarry licenses²⁸
- renewal of existing leases and licenses,²⁹
- fixing of Royalty, dead rent and collection thereof³⁰
- imposing conditions on mining operations³¹

²⁸ Section 5, Rajasthan Minor Mineral Concession Rules, 1986.

²⁹ Section 5, Rajasthan Minor Mineral Concession Rules, 1986.

³⁰ Chapter IV and Section 28, Rajasthan Minor Mineral Concession Rules, 1986.

³¹ Section 29, Rajasthan Minor Mineral Concession Rules, 1986.



- levying fines and penalty on violation of the conditions of contract³²

As mentioned above, PESA vests the above powers in the Gram Sabha or Panchayat at appropriate level in Scheduled Areas. But the concession rules do not make a distinction between scheduled and non scheduled areas and vests the control over minor mineral operations in the State Government. Also the Rules do not make provisions for granting prospecting licenses as mentioned in PESA. This is clearly, inconsistent with PESA and hence needs to be amended.

Suggested Amendments:

Insert Sub section in Section 3(Definitions)

(xxvii) “Prospecting operations” means any operations undertaken for the purpose of exploring, locating or proving minor mineral deposits.”

(xxviii) “Prospecting license” means license granted for the purpose of undertaking prospecting operations for minerals specified in schedule I and Schedule II.

Insert Sub-rule (8 and 9) in Rule 4 of Rajasthan Minor Mineral Concession Rules, 1986

(8) “No prospecting license shall be granted or renewed to a person for mining in Scheduled Areas without obtaining free, prior and informed consent of the Gram Sabha or Gram Sabhas.

(9) “No mining lease shall be granted or renewed to a person for mining in Scheduled Areas without obtaining free, prior and informed consent of the Gram Sabha or Gram Sabhas.

Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicizing 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.”

Insert Rule 8-A

“(i) After receipt of the application for mining leases in Scheduled Areas, the Competent Authority shall within fifteen days, inform the Gram Panchayat and the Gram Sabha or Gram Sabhas as the case may be, within whose jurisdiction the proposed area of mining falls, by issuing a public notification, beat of drum and by affixing a copy of the notification at a conspicuous place in the village(s).

(ii) The notification shall contain location, size of the proposed mining area and type of minor minerals proposed for extraction, period of lease and such other particulars as it may deem necessary.

(iii) Thereafter, the Competent Authority along with the Applicant shall within fifteen days of publication of notice organize a consultation with the Gram Sabha or Gram Sabhas as the case may be as per Section 3(a-i) of Rajasthan Panchayati Raj (Modification of Provisions in their

³² Chapter VII, Rajasthan Minor Mineral Concession Rules, 1986



Application to the Scheduled Areas) Act, 1999 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 (if any), impact on the forest, wildlife and biodiversity and livelihood of the village communities and such other information sought by the Gram Sabha.

(iv) 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. The Gram Sabha may accept, reject the proposal or alter or impose such terms and conditions on lease as it may deem necessary. The Gram Sabha(s) may alter the location and size of the Area proposed for exploitation of minor minerals.

(v) A copy of the resolution of the Gram Sabha(s) shall be sent to the Gram Panchayat and to the Competent Authority in Mines and Geology department within 15 days of its passing.

(vi) Every application for renewal of mining leases shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha as per the procedure mentioned above shall be obtained.

(vii) A register of mining leases granted within its jurisdiction shall be maintained by the Gram Sabha and Gram Panchayat, containing such particulars as it may deem necessary.

Insert Rule 8-B

(1) "Provided that the procedure provided in Rule 8-A shall as far as appropriate apply to grant and renewal of prospecting licenses for exploitation of minor minerals in Scheduled Areas."

(2) "The minimum area for grant of prospecting license for minor mineral shall be 0.1 sq. km (10 hectares) provided that for reasons to be recorded in writing, a state government in respect of any area and any minor mineral may notify a minimum area different than the area specified in the sub-section."

(3) "A prospecting license shall be granted for a period not less than two years and not more than three years and may be extended on application by the license in respect of such part of the area or may be specified."

Insert proviso in Rule 11

"provided that in case of applications for mining leases, in scheduled areas, the area for grant of licenses or mining leases and maximum number of mining leases to be granted for a particular area shall not be fixed without taking approval of the Gram Sabha or Gram Sabhas as the case may be."

Insert sub-rule (5) in Rule 15

"In scheduled areas, no transfer of mining leases as mentioned above shall be approved by the Competent Authority without obtaining consent of the Gram Sabha."

Insert proviso in Rule 16

"provided that in Scheduled Areas, the period of mining leases shall be decided by the Gram Sabha"

Insert Sub rule (4-a) in Rule 32



“The revenue generated through royalties, dead rent or any other dues on mining leases in Scheduled Areas, at least 10% of such revenue shall be deposited in the funds of the Gram Sabha or Gram Sabhas in such proportion as may be decided by the Gram Sabha(s) and the Competent Authority, and shall be used for the purpose of development of the village or villages as the case may be.”

Insert proviso to rule 21(3)

“provided that for mining in scheduled areas, the free, prior and informed consent of the Gram Sabha or Sabhas as the case may be shall be taken as provided in Rule 8-A before granting mining leases by public auction or by inviting tenders.”

Insert proviso to Rules 21(4)

“provided that any mining lease granted by auction in Scheduled Areas, shall not be discontinued by the Government without obtaining free, prior and informed consent of the Gram Sabha(s).”

Insert proviso in Rule 22(1)

“provided that for mining in Scheduled Areas, no quarry license shall be granted or renewed to any person without obtaining free, prior and informed consent of the Gram Sabha or Gram Sabhas as the case may be.”

Insert sub rule in Rule 24

“Each Gram Sabha shall maintain a register to record the quarry leases granted within its jurisdiction and such other particulars as it may deem necessary.”

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*

Rajasthan PESA

Contrary to Central PESA, Rajasthan PESA mandates giving the power to enforce prohibition or to regulate or restrict the sale and consumption of intoxicants on the Gram Sabha or the Panchayat at appropriate level. Further, the exercise of this power has been made subject to rules as may be prescribed by the State Government. No Rules have been framed as of now in this regard. [Section 3 (k) (i)]



Draft PESA Rules, 2010 provide for provisions for imposing prohibition on the possession and consumption of intoxicants by the Gram Sabha or regulate the sale of intoxicants in Scheduled Areas. The Gram Sabha shall pass a resolution in this regard and relevant excise officer shall assist the Gram Sabha in the implementation of its decisions. Since a number of social evils are linked with consumption of intoxicants, provisions have also been made where the suggestion s of women will be implemented, and penalty will be levied to discourage social evils like wife beating among others.³³ These provisions are progressive and are in conformity with PESA. To strengthen this initiative more comprehensive regulations are suggested below which will help the Gram Sabha in exercising its powers effectively.

Legal Issues and Recommendations:

- Firstly, the above provision is inconsistent with PESA as PESA mandates that both the Gram Sabha and Panchayat at appropriate level shall be given the power to enforce prohibition or to regulate or restrict the sale and consumption of intoxicants in Scheduled Areas. Therefore, necessary amendments need to be made in Rajasthan PESA where the above power is given to both Gram Sabha and Panchayat, preferably Gram Panchayat.
- Secondly, exercise of this power is made subject to Rules as framed by the State Government which is not the mandate of PESA. The Gram Sabha and Panchayat should have autonomy in regulating the subject matter of intoxicants within the village as per their traditions and customs. The State Government can frame Rules reflecting the letter and spirit of PESA that facilitate the Gram Sabha and Panchayats and not restrict their functioning.

In the light of above following amendments are suggested:

Rajasthan PESA

Replace the provisions of Section 3(k)(i) with :

“Gram Sabha shall in consultation with the Gram Panchayat exercise the power to enforce prohibition, regulate or restrict the sale and consumption of any intoxicant in the village.”

Besides, it is also important to analyse the provisions of Rajasthan Excise Act, 1956 and rules thereunder which regulate the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs and other excisable articles, prohibiting manufacture, sale, consumption, import and export of illicit liquor. The Act also restricts possession, imports and transport of any liquor in prohibition areas. The Act does not make a distinction between Scheduled and Non Scheduled areas in regulating the above matters and all the powers within the purview of the Act vest in the Revenue Department which is contrary to the provisions of PESA and hence needs to be amended. Following amendments are suggested in the Rajasthan Excise Act, 1950.

Rajasthan Excise Act, 1950

³³ Rule, 29 Rajasthan Panchayati Raj (Modification of Provisions in their Application to Scheduled Areas) Rules, 2010.



Insert the definition of “Intoxicants” in Section 3

“Intoxicants” shall mean beer, spirit, fermented liquor or any alcoholic liquor for human consumption, denatured spirit or denatured spirituous preparation, intoxicating drug, molasses, pachwai, tari or any other country spirit.”

Insert proviso in Section 5: Power of the State Government to declare limit of sale by retail:

Provided that in case of sale of any liquor in Scheduled Areas, the permissible quantity of retail sale and wholesale shall be decided by the Gram Sabha of every village in which the liquor is offered for sale.

Insert Proviso in Section 16(2)

“Provided that no distillery, brewery or pot still shall be constructed or worked in Scheduled Areas without the prior, written permission of the Gram Sabha (s) within whose jurisdiction the above distillery, brewery or pot still is proposed to be established or worked.

Insert subsection (2) in section 17

“No action mentioned in this section shall be taken for a brewery, distillery or pot still in a scheduled area or proposed to be established or worked in a Scheduled Area, shall be taken by the Excise Commissioner or any competent authority without taking prior written approval of the Gram Sabha(s) concerned.”

Insert subsection (5) to Section 19

*“In Scheduled Areas, the permissible limit for possession of any intoxicant by a person not being licensed to manufacture, cultivate, collect or sell any intoxicant shall be decided by the Gram Sabha within whose jurisdiction the concerned person resides.
Provided that a licensed vendor shall not possess more than the limit of intoxicants prescribed by the Gram Sabha within whose jurisdiction he is operating.”*

Insert proviso to Section 20

“Provided that no license for sale of intoxicants in Scheduled Areas shall be granted without prior, written permission and on such terms and conditions as the Gram Sabha within whose jurisdiction licensee is proposing to operate.”

Insert proviso in Section 24

“Provided that, in Scheduled Areas, no such exclusive privilege shall be granted to any person without the prior, written consent of the Gram Sabha.”

Insert Subsection (4)and (5) in Section 41

(4)(i) “Gram Sabha shall also have the power to make Rules regarding possession and sale of intoxicants in Scheduled Areas, including rules regarding permissible limit of possession of intoxicants by each person, maximum quantity of sale to each person, maximum limit of manufacture for personal consumption by each household in the village, place of establishing sale outlets and manufacturing units, time of opening and closing of shops and manufacturing units, conditions of employment of residents of the village in shops and manufacturing units and on any other matter as the Gram Sabha deems necessary ”

(ii) A copy of the resolution containing any rules framed by the Gram Sabha(s) shall be sent to



the Gram Panchayat within 15 days of passing the resolution.

(5) The Rules made by the State Government or the Chief Excise Authority under section 42, shall not be inconsistent with the Rules framed by the Gram Sabha(s) in Scheduled Areas under this section.

Insert proviso to Section 43

“provided that in Scheduled Areas, the authorised representatives shall have the power to enter the premises of a manufacturing unit or sale outlet of intoxicants to inspect books or accounts, stills, utensils, instruments, material, apparatus, working conditions.”

Rajasthan Excise Rules, 1956

Insert proviso in Rule 18(1)

“Provided that the permission for possession of a quantity beyond the limit of retail sale shall not be granted to any person residing in a Scheduled Area, without prior written approval of the Gram Sabha concerned.

Insert clause (e) in Rule 18(1)

“A copy of the resolution of the Gram Sabha duly signed, which permits the applicant to take possession of Indian made foreign liquor or country liquor specifying a quantity in excess of the permissible limit of sale in the village.”

Insert proviso to Rule 46D(i)

“Provided that in a Scheduled Area, no person not being a licensed wholesale or retail vendor of denatured spirit or denatured spirituous preparation shall possess denatured spirit or denatured spirituous preparation in excess of the limit of retail sale without the prior written permission of the Gram Sabha within whose jurisdiction he intends to procure the excess quantity.”

Insert Rule 46-E (iv) Wholesale and retail sale in Scheduled Areas

“In Scheduled Areas, license for the sale by wholesale or retail of denatured spirit or denatured spirituous preparation shall not be granted by the District Excise Officer or Assistant Excise Commissioner as the case may be without a prior written approval of the Gram Sabha(s) within whose jurisdiction the applicant intends to set up retail or wholesale outlet. The Gram Sabha shall prescribe the terms and conditions of the license including the period of license, permissible quantity of retail sale, place of establishing the shop, time of opening and closing of the shop, penalty in case of breach of any of the conditions and such other conditions as the Gram Sabha(s) deem necessary.”

Insert subrule (4) to Rule 47

“No licenses under this Rule shall be granted for Scheduled Areas without obtaining prior written permission from the Gram Sabha(s) within whose jurisdiction the wholesale vend is to be operated.”

Insert proviso in Section 60



“No license for manufacture, wholesale and retail sale of liquor shall be granted by auction in Scheduled Areas.”

Insert proviso in Rule 67-A

Provided that license under the guarantee system in Scheduled Areas shall not be granted without the prior written consent of the Gram Sabha of the village where the applicant is proposing to sell the country liquor. After short listing the tenders, the Excise Commissioner shall call the meeting of the gram Sabha (s) where the tenderer has proposed to sell country liquor. The terms of each tender shall be informed to the Gram Sabha. The Gram Sabha shall pass a resolution accepting or rejecting the tender and send a copy of the resolution to the Excise Commissioner and Gram Panchayat within 15 days of its passing.

Insert proviso to Subrule (g) of Rule 67-B

“provided that any tender received for Scheduled Areas shall not be accepted by the Excise Commissioner without seeking prior approval of the Gram Sabha as per the procedure mentioned in proviso to Rule 67-A.”

Insert proviso to Rule 67-I

“Provided that no license for exclusive privilege of selling country liquor by retail within any local area shall be granted by either of the methods mentioned in Sub-rule (2) except by auction or by any other method adopted by the Excise commissioner as per Rule 67-L, without prior written approval of the Gram Sabha. The procedure for seeking approval shall be as mentioned in proviso to Rule 67-A.”

Insert Rule 69-C

“twenty percent of the license fee charged from the licensee for the retail sale or wholesale of any intoxicants by any mode whatsoever shall be deposited in the funds of the Gram Sabha of the village where the licensee is carrying out the business of sale of intoxicants.

Insert Subrule (2) in Rule 72

“Provided that a license for carrying out business in Scheduled Areas shall be granted by the Gram Panchayat with the prior approval of the concerned Gram Sabha.

Exception- license under guarantee system, through tenders or for exclusive privilege in Scheduled Areas shall be granted by the Excise Commissioner after seeking prior, written approval of the Gram Sabha concerned.”

Insert proviso in sub rule (a) of Rule 72-B

“Provided that transfer of any licence or permit granted under this Act and Rules for possession and sale by any person in Scheduled Areas or change in the location of business shall not be permitted by the licensing authority without taking prior written consent of the Gram Sabha concerned. Gram Sabha shall be informed within 15 days of receiving intimation from the licensee. Gram Sabha shall pass a resolution and send a copy to the licensing authority within 30 days of receiving the intimation on the licensing authority”

Insert Sub rule (3) in Rule 73

“Notwithstanding anything contained in any provision of this Act, in Scheduled Areas, the



Gram Sabha, while approving the application for license may also prescribe a period for which the license for manufacture and sale of intoxicants shall be valid.

Insert sub rule (6) in Rule 75

“In Scheduled Areas, the Gram Sabha, while approving the application for license may also prescribe a place for carrying out the business of manufacture and sale of intoxicants.”

Insert proviso in Rule 76

“In Scheduled Areas, the Gram Sabha shall have the power to cancel, suspend or modify licenses if the licensee violates any terms of the license or on any of the abovementioned grounds.” The Gram Sabha, after giving the licensee due hearing, shall pass a resolution and cancel, suspend or modify the license and send a copy of the resolution to the licensing authority within 30 days. The Licensing Authority shall within 30 days of receiving the copy of resolution shall cancel, suspend or issue a modified license to the licensee as per the terms of the resolution of the Gram Sabha and intimate the action taken to the Gram Sabha and the Excise Commissioner within 15 days.”

Insert Rule 77-B(3)

“Provision of sub rule (2-d) shall not apply to Scheduled Areas. Printing or publication of advertisements in any manner mentioned in Rule 77-B(1), in any village in Scheduled Areas shall not be allowed without prior written consent of the Gram Sabha of that village.”

Rajasthan Excise (Closure of Country Liquor Shop by Local Option) Rules 1975

Insert Rule 1-A

“This Rule shall not apply to Scheduled Areas of the State. The time and days of opening and closing of liquor Shops in Scheduled Areas shall be decided by the Gram Sabha as per the provisions of the Rajasthan Excise Act, 1955 and Rajasthan Excise Rules, 1956.”

Rajasthan Foreign Liquor (Grant of Wholesale Trade and Retail of Licenses) Rules, 1982

Insert proviso in Rule 3

“Provided that in Scheduled Areas retail license for sale of foreign liquor consumption off the premises shall not be provided by auction. License, on commission basis or by negotiation or by any other mode sanctioned by the Government from time to time, shall only be granted after seeking prior approval of the Gram Sabha.”

Insert exception in the proviso to Rule 3-A(1)

“Provided that nothing in these Rules shall prevent ‘except in Scheduled Areas’ granting of licenses.....same area”

Insert third proviso to Rule 3-A(2)

“provided further that in Scheduled Areas, twenty percent of the initial fee charged as mentioned in first and second proviso to Rule 3-A(2), from the licensee shall be deposited in the funds of the Gram Sabha concerned.”

Insert proviso in Rule 7

“provided that any license granted under these Rules for a Scheduled Areas shall be renewed



with the prior written approval of the Gram Sabha”

Insert Exception in Rule 8

In case there is any conflict between the provisions of these Rules and the Rajasthan Excise Rules, 1956 the former shall prevail, ‘except in Scheduled Areas’”.

Rajasthan Liquor Prohibition Rules, 1967

Insert proviso in Rule 3

“provided that in Scheduled Areas, while granting permit for possession of Liquor, the Gram Sabha may prescribe the maximum limit to be possessed for self consumption or for sale, by any person residing in a Scheduled Area. In case, the Gram Sabha does not prescribe any quantity, the quantity mentioned in Rule 3 shall apply. Any person desirous of possessing a quantity exceeding the amount prescribed by the Gram Sabha or by the provisions of this Rule shall seek prior, written approval of the Gram Sabha.”

Insert Rule 10(2)

“Gram Sabha in Scheduled Areas shall also maintain a register of the names and particulars of the persons of the village who have been granted permits under the provisions of this Rule.”

Rajasthan Brewery Rules, 1972

Insert Rule 5-A

(1) “No license for construction and establishment of a Brewery in Scheduled Areas, shall be granted by the Excise Commissioner without taking prior, written approval of the Gram Sabha of the village where the applicant proposes to construct the brewery.

(2) After receiving the application under Rule 3, the Excise Commissioner shall inform the concerned Gram Sabha of the particulars of the application and such other information as the Gram Sabha requires. Within 30 days of receiving the application, a meeting of the Gram Sabha shall be called by the Excise Commissioner to seek approval. The Gram Sabha shall pass a resolution, accepting or rejecting or prescribing such terms and conditions of the license as it deems necessary.

(3) In the Resolution, the Gram Sabha may prescribe the place of setting up of brewery, conditions for employment of the people of the village in the brewery, prescribe conditions for transit of beer from the brewery, time of opening and closing of the brewery, dumping of waste, penalty for violating the conditions of the license, prohibition on polluting the neighbouring areas and such other restrictions as the Gram Sabha deems necessary.”

(4). Gram Sabha shall send a copy of the resolution to the Gram Panchayat and the Excise Commissioner within 15 days of passing the resolution.

(5) Any transfer of renewal of the license granted shall take place with the prior, written approval of the Gram Sabha.”

(6) Gram Sabha and Gram Panchayat shall have the power to inspect the premises, books of accounts, licenses and permits and such other documents, at such time and date with prior intimation to the licensee, as the Gram Sabha or Gram Panchayat deems necessary.”

Rajasthan Distilleries Rules, 1977



Insert Rule 4-A

(1) “No license for construction and establishment of a Distillery in Scheduled Areas, shall be granted by the Excise Commissioner without taking prior, written approval of the Gram Sabha of the village where the applicant proposes to construct the brewery.

(2) After receiving the application under Rule 3, the Excise Commissioner shall inform the concerned Gram Sabha of the particulars of the application and such other information as the Gram Sabha requires. Within 30 days of receiving the application, a meeting of the Gram Sabha shall be called by the Excise Commissioner to seek approval. The Gram Sabha shall pass a resolution, accepting or rejecting or prescribing such terms and conditions of the license.

(3) In the Resolution, the Gram Sabha may prescribe the place of setting up of Distillery, conditions for employment of the people of the village in the Distillery, prescribe conditions for transit of spirit and other finished products from the Distillery, time of opening and closing of the Distillery, dumping of waste, penalty for violating the conditions of the license, prohibition on polluting the neighbouring areas and such other restrictions as the Gram Sabha deems necessary.”

(4) Gram Sabha shall send a copy of the resolution to the Gram Panchayat and the Excise Commissioner within 15 days of passing the resolution.

(5) Gram Sabha and Gram Panchayat shall have the power to inspect the premises, books of accounts, licenses and permits and such other documents, at such time and date with prior intimation to the licensee, as the Gram Sabha or Gram Panchayat deems necessary.”

Rajasthan Neera (Unfermented Juice of Palms) Rules, 1960

Insert Rule 3-A

“(1) No license for manufacture of intoxicants from neera for domestic consumption or sale shall be granted to any person without the prior written approval of the Gram Sabha.

(2) After receiving an application under Rule 3, the District Excise Officer shall convene a meeting of the Gram Sabha within 30 days and inform about the particulars of the application. The Gram Sabha shall pass a resolution accepting, rejecting or modifying the application.

(3) Through Resolution the Gram Sabha may also prescribe such terms and conditions including maximum limit of manufacture, possession and sale by the licensee, place of manufacture or sale, conditions of tapping, penalty for breach of any terms of the license, period of license.”

(4) Gram Sabha shall send a copy of the resolution to the Gram Panchayat and the District Excise Commissioner within 15 days of passing the resolution.

(5) Gram Sabha and Gram Panchayat shall have the power to inspect the premises, books of accounts, licenses and permits and such other documents, at such time and date with prior intimation to the licensee, as the Gram Sabha or Gram Panchayat deems necessary.”

(6) Gram Sabha shall maintain a record of the licences issued under this Rule in the village, particulars of the licensee and terms of each license issued and such other information as it may deem necessary.”

Rajasthan Molasses Rules, 1985

Insert Rule 5-A

No license for possession and Sale of Molasses by any person shall be issued under these Rules without, prior written approval of the Gram Sabha of the village where molasses is



manufactured and proposed to be sold by the applicant.

District Excise Officer after receiving an application under Rules 3, 4, 5 and 6 shall convene a meeting of the Gram Sabha concerned within 30 days. The Gram Sabha shall be informed of the particulars of the applications. The Gram Sabha shall pass a resolution approving or rejecting or prescribing such terms and conditions of the license as it deems necessary.

(3) Through Resolution the Gram Sabha may also prescribe such terms and conditions including maximum limit of possession and sale by the licensee, place of sale, penalty for breach of any terms of the license, period of license.”

(4) Gram Sabha shall send a copy of the resolution to the Gram Panchayat and the District Excise Commissioner within 15 days of passing the resolution.

(5) Gram Sabha shall maintain a record of the licences issued under this Rule in the village, particulars of the licensee and terms of each license issued and such other information as it may deem necessary.”

6.2 Ownership of Minor Forest Produce

Regarding Minor Forest Produce (hereinafter referred to as ‘MFP’), 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)]*

Rajasthan PESA

Rajasthan PESA provided that the Panchayati Raj Institutions at appropriate level or the Gram Sabha as may be prescribed in the Scheduled Areas shall have the ownership of minor forest produce subject to such Rules as may be prescribed by the State Government as to control and management of minor forest produce. [Section 3(k)(ii)]

Administrative Response:

Besides, to implement the above provisions of PESA in Rajasthan, the state forest department issued a notification dated July 17, 2003³⁴ where income generated from the sale of minor forest produce (*which includes honey, wax, bark, Mahua flower, oil seeds, wild bushes and shrubs, Amla, Bahera, Aritha, Jamun, Khirni, Mango, Ber, Lisoda, Tendu flowers, grass, fodder, Palash leaves etc.*) extracted from forest and non forest lands in the state has been vested in the Gram Panchayat. In addition where there are, Village forest protection Committees have been formed under Joint Forest Management program, Gram Panchayats in those areas shall function as per the terms of the MoU agreed between these Committees and the Forest Department.

All activities related to the trade of *Tendu patta* shall be undertaken by the Forest Department. All incomes received from the sale of *Tendu patta* after deducting the administrative cost, shall be distributed amongst those Gram Panchayat in whose jurisdiction *Tendu Patta* is collected, by the Zilla Parishad. Further, the State Government will issue guidelines for distribution of income.

³⁴ Notification No. P 15(35) Forest/97, Dated July 17, 2003, Forest Department, Government of Rajasthan.



The notification also provided that in carrying out the above mentioned functions, the PRI shall act in conformity with the Rajasthan Forest Act and Rules and circulars, guidelines and notifications, Joint forest management provisions.

Further, note that Draft PESA Rules, 2010 make provisions for exercise of the right of ownership of minor forest produce by the Gram Sabha. Detailed provisions have been made for collection, storage, and disposal of minor forest produce. The Rules, however, restrict the functions of Gram Sabha and make them subject to the control, of forest department. Thus for example, no person shall cut any grass from a forest area within the jurisdiction of its village which is prohibited from cutting, grass shall be removed from the forest only between 1st October and 31st January, grazing is prohibited in certain areas, minor forest produce from protected areas shall not be removed without the permission of the Chief Wildlife Warden.³⁵ Collection, storage, local level processing and disposal of minor forest produce except *Tendu Patta and Bamboo* shall be done by the Gram Sabha through a Village Forest Management Committee or any other body formed for this purpose under the terms of an agreement between Gram Sabha, Gram Panchayat, Forest Department and Village Forest Management Committee. Besides, Gram Sabha shall dispose off minor forest produce at a minimum support price decided by a committee which comprise of members of the Panchayat³⁶. Apart from this special provisions have been made for bamboo and tendu patta. Specific period has been prescribed in which bamboo shall not be extracted, scientific forestry for improvement of production of bamboo. Bamboo shall be collected by the Village forest management Committee and shall be sold by the Forest Department. Trade of Tendu patta shall be regulated mainly by the provisions of the Rajasthan Tendu Leaves (Regulation of Trade) Act, 1974 with very limited role of the Gram Sabha.

It appears that the State is reluctant to divulge control over minor forest produce especially tendu patta and bamboo to the Gram Sabha. The above Rules are not in conformity with PESA, as firstly they are not formed in consultation with the Gram Sabha, secondly the role of Gram Sabha is severely restricted. Ownership rights over minor forest produce have not been effectively devolved.

Legal Issues:

PESA endows the ownership of minor forest produce to the Gram Sabha and the Panchayat at appropriate level as prescribed by the State Governments. However, Rajasthan PESA states that the above power shall be exercised by either the Gram Sabha or the PRI. Further, the right of ownership of MFP is not an absolute right but is limited by the rules framed by the state government. The Notification issued by the forest department in 2003 vests the income from MFP on the Gram Panchayat.

Ownership is an overarching right which includes the discretion to sell or not to sell, to use, to manage, conserve and protect minor forest produce among others. But in this case the discretion of Gram Panchayat to access, collect, use, transport, sell and to do all other acts in the exercise of right of ownership have been curtailed. Besides, the ownership right has not been vested in the

³⁵ Rule, 25, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.

³⁶ Rule 26 Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010



Gram Sabha as mandated in PESA. To correct this anomaly following amendments are suggested.

Delete the provisions of Section 3(k)(ii) and instead insert the following

(ii-a) “Every Gram Sabha shall be vested with the ownership 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 the village have had traditional access.

(ii-b) 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 Sasan 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 Rajasthan except the inclusion of bamboo.”

(ii-c) Gram Panchayat shall facilitate the integrated management and supervision of collection, storage, processing, marketing, value addition of minor forest produces through the Gram Sabha.

(ii-d) 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 Orissa, to bring them in conformity with PESA and Panchayat legislation.

Rajasthan Forest Act, 1953

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.

Delete ‘Bamboo’ from the definition of tree mentioned in Section 2(9).”

Insert proviso to Section 5

“Nothing in this section shall affect the right of the Gram Sabha and Gram Panchayat mentioned in Section 3(k)(ii) of Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”



Insert proviso in Section 12

Nothing in this section shall affect the right of the Gram Sabha and Gram Panchayat mentioned in Section 3(k)(ii) of Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

Insert subsection (c) in Section 13

“(c) the right of ownership of the Gram Sabha, right of access to collect, use and dispose of minor forest produce within and outside the village boundaries where members of Gram Sabha of the village have had traditional access, list of minor forest produce prepared by the Gram Sabha in accordance with section 3(k)(ii-b) of Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999 and such other rules framed by the Gram Sabha in the exercise of its rights over minor forest produce.”

Insert Proviso in Section 14

“Right to own, access to collect use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999, shall not be granted to any member of Gram Sabha if the Collector has reasons to believe that such a person is already exercising the right to collect minor forest produce in the proposed reserved forest.

Insert proviso to Section 26

“provided that nothing in this section shall affect to the lawful exercise of the rights by the of the right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999. Provided further that, in case the right holder contravenes any rules framed by the Gram Sabha or any other lawful authority shall be punishable with imprisonment and fine as decided by the Gram Sabha.

Insert Proviso to Section 26-A

Provided that, the State Government shall not make any Rules which prohibit or restrict the lawful exercise of the right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.

Provided further that, in case of conflict between the Rules made by the State Government and the Gram Sabha on any matter related to the above right, the Rules framed by the Gram Sabha shall prevail.

Insert subsection (4) to Section 28

“Nothing in this Section shall restrict or prohibit the lawful exercise of the right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

Insert Subsection (6) in Section 29



“Nothing in this Section shall affect the lawful exercise of the right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

The Forest Settlement Officer shall prepare a record of the rights exercised by the members of the Gram Sabha over minor forest produce, granted under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

Insert Section 34-A

“Nothing in Section 30, 31, 32 and 34 shall restrict or prohibit the lawful exercise of right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

Insert proviso in Section 39(1)

“Provided that in Scheduled Areas, the Gram Sabha shall have the power to levy duty on minor forest produce. The Gram Sabha may prescribe a rate of duty which is different from the one prescribed by the State Government.”

Insert subsection (3) to Section 41

“In Scheduled Areas, the Gram Sabha shall make rules to regulate the transit of minor forest produce.”

Insert Section 88

“In Scheduled Areas, the Gram Sabha shall levy penalty on any person who has committed theft of minor forest produce, or violated any of the Rules framed by the Gram Sabha regarding, collection, storage, transit and use of minor forest produce within the village.”

Reserved Forest Rules, 1957

Insert proviso to Rule 9

“provided that, in Scheduled Areas, no areas shall be closed for grass cutting, where the members of the Gram Sabha of a village exercises the right to collect minor forest produce as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999”

Insert Exception in Rule 10

*“no person whose right is admitted under Section 12 of the Rajasthan Forest Act, 1953 **“or any member of the Gram Sabha in a scheduled area, having the right to own, access to collect, use and dispose off minor forest produce as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999”** shall carry any forest produce except in accordance with a permit in form IV issued by the Range officer.”*

Insert proviso in Rule 10



“provided that the permit granted, shall not affect the lawful exercise of the right to own, access to collect, use and dispose off minor forest produce as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999”

Insert proviso in Rule 11

“Provided that in Scheduled Areas the route for transit of minor forest produce shall be decided by the Gram Sabha.”

Insert proviso to Rule 19

“Provided that in Scheduled Areas, Gram Sabha may prescribe different rules for cutting of bamboo.”

Insert Rule 24-A

“Rules for transit of forest produce from reserved forest shall be framed by the Gram Sabha. If any provision under these Rules, contravene the Rules framed by the Gram Sabha, then the latter shall prevail.”

Rajasthan Forest Settlement Rules, 1958

Insert Rule 17

““Nothing in this Section shall affect the lawful exercise of the right to own, access to collect, use and dispose off minor forest produce as vested in the Gram Sabha of a village in Scheduled Area as per PESA and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

The Forest Settlement Officer shall prepare a record of the rights exercised by the members of the Gram Sabha over minor forest produce, granted under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rajasthan Panchayati Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999.”

Protected Forest Rules, 1957

Insert Rule 21

“Notwithstanding anything contained in these Rules, in Scheduled Areas, no tree shall be felled, girdled, lopped, topped, uprooted, burnt or bark stripped off, or any grass cut or any other minor forest produce removed from a protected forest without prior, written approval of the Gram Sabha of the village .”

Gram Sabha shall make rules prescribing the manner of removing minor forest produce, quantity to be removed by each right holder, duty to prevent fire in the forest area, penalties for contravention of the Rules framed or any resolution passed, transit of any minor forest produce and such other rules as the Gram Sabha deems necessary.”



Rajasthan Forest Produce Transit Rules, 1957

Insert Rule 9-A

“Nothing in these Rules shall apply to transit of minor forest produce in Scheduled Areas. The Gram Sabha shall have the power to frame rules for transit of minor forest produce.”

The Rajasthan Tendu Leaves (Regulation of Trade) Act, 1974

Insert Section 23-A

“Notwithstanding anything contained in these Rules, in Scheduled Areas, the Rules for transit of Minor Forest Produce shall be framed by the Gram Sabha.”

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)]

In Rajasthan PESA, Gram Sabha or Panchayati Raj Institution at appropriate level as may be prescribed by the State Government, has been allocated the power to prevent alienation of land in the Scheduled Areas and to take appropriate action in accordance with the law in force in the state, to restore any unlawfully alienated land of Scheduled Tribe [Section 3k(iii)].

Revenue Department, Government of Rajasthan issued a circular in 2002³⁷ specifying the jurisdiction of the Gram Sabha and PRI regarding land alienation. Power to prevent land alienation which was with the Tehsildar earlier³⁸ has now been given to the Panchayat Samiti for Scheduled Areas. Besides, the Circular also prescribes role of the Gram Sabha and Gram Panchayat in preventing unlawful land alienation and in restoration of an unlawfully alienated land. The *Patwari* shall prepare a list of such unlawfully alienated lands of Scheduled Tribes of a village and present the list to the Gram Sabha or Gram Panchayat for its consideration. A Consultation shall be organised with the members of the Gram Sabha or Gram Panchayat and the person who has acquired the land and in case the person agrees to return the land to the Scheduled Tribe, the Gram Sabha shall restore the land to the Scheduled Tribe. In case the acquirer refuses to return the land, then a complaint shall be filed before the Panchayat Samiti, the Panchayat Samiti shall order restoration of the land to the Scheduled Tribe. The

³⁷ Notification No. F 10(5) Rev-6/2002/12, dated April 23, 2002, Revenue Department, Government of Rajasthan.

³⁸ Notification No. F-10(5) Rev-6/2000/12, dated April 7, 2002, Revenue Department, Government of Rajasthan.



responsibility of reposing the possession of the unlawfully alienated land is vested in the Gram Sabha or Gram Panchayat.

Draft PESA Rules, 2010 also prescribe procedure for preventing unlawful alienation of land of a Scheduled Tribe, which says that the powers of the Tehsildar with regard to prevention of alienation and restoration of alienated land under Rajasthan Land Revenue Act, 1953 shall be exercised by the Panchayat Samiti. Gram Sabha has been given the function to ensure prevention of unlawful alienation of land of a Scheduled Tribe to a non scheduled tribe, but no specific provision has been made with regard to exercise of this function and also for restoring of unlawfully alienated land. Hence the above rules are not in conformity with PESA provisions.³⁹

Legal Issues:

- The above Circular manages to bring in clarity in the functions of the Gram Sabha and PRI, however it is still vague in some respect, for instance, the *patwari* shall present the list of unlawfully alienated lands to the Gram Sabha or the Gram Panchayat. There should be clear devolution of powers on the Gram Panchayat and Gram Sabha.
- Secondly, the Circular does not mention the procedure to prevent unlawful alienation of land of a Scheduled Tribe.
- The authority to carry out this function shall be given to the Gram Panchayat amongst the PRI, as Gram Panchayat is closest to the Gram Sabha and is directly responsible for the development of the villages within its jurisdiction.

Following amendments are suggested to bring in further clarity in the role of PRI and Gram Sabha.

Rajasthan PESA

Delet Section 3(k)(iii) and Insert the following

(iii-a) “Gram Sabha and Gram Panchayat 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 to that person to whom it originally belonged and if that person is dead to his legal heirs.

(iii-b) In Scheduled Areas no land of a Scheduled Tribe shall be alienated without the free, prior and informed consent of the Gram Sabha. In case of an unlawful alienation, the Gram Sabha shall send a written complaint within one week of receiving such information on unlawful alienation, to the Gram Panchayat. The Gram Panchayat shall proceed to take appropriate action within fifteen days of receiving a written complaint of the Gram Sabha. Gram Panchayat may take assistance of Panchayat Samiti and Zilla Parishad if it deems necessary.

(iii-c) In case of lands belonging to Scheduled Tribes which have already been unlawfully alienated, the Patwari shall prepare a list of such land for every village and present the list to the Gram Sabha and the Gram Panchayat for its consideration. The list shall also be sent to the Panchayat Samiti and Zilla Parishad. The Gram Panchayat shall organise a consultation with

³⁹ Rule 20 and 21, Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010



the members of the Gram Sabha the Scheduled Tribe whose land was taken and the person who unlawfully acquire the land. The Acquirer shall be asked to restore the land to the Gram Sabha. If he agrees the land shall be restored back to the concerned Scheduled Tribe. If he refuses to agree, the matter shall be forwarded to the Panchayat Samiti for its decision along with a resolution of the Gram Sabha. The Panchayat Samiti shall pass a resolution, ordering the Acquirer to restore the land within one month of receiving the copy of the resolution. One copy each of the resolution shall be sent to the Gram Sabha, Gram Panchayat, Zilla Parishad and the Revenue Department.”

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)]*

Rajasthan PESA

The Panchayati Raj Institution at appropriate level, or Gram Sabha as the case may be, prescribed in a Scheduled Area shall have the power to exercise control over institutions and functionaries in all social sectors to the extent and in the manner to be specified by the State Government from time to time.” [Section 3(k)(vi)]

Legal Issues:

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

There is a need to have clarity on the powers and sectors of social sector where the Panchayat at appropriate level is able to exercise power.

Second, the above power has been vested in the Gram Sabha of the PRI as may be prescribed by the State Government, however, as per PESA, the above power needs to be given to the Gram Sabha and Panchayat at appropriate level. Following amendments are suggested.

Rajasthan PESA

Delete provisions of section 3(k)(vi) and instead insert the following



(a) *“The Gram Sabha shall exercise control over institutions and functionaries in social sectors within the village.*

Provided that the Gram Sabha shall be rendered necessary assistance by the Gram Panchayat, Panchayat Samiti and Zilla Parishad in carrying out its functions under this Section.

(b) *“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.”*

(c) *In the exercise of above mentioned powers the Gram Sabha may:*

- *Call for the administrative reports of all the aided educational institutions through the respective gram Panchayat.*
- *Monitor national health programmes, review the supply of medicines to primary health centers and government hospitals, monitor the health extension in rural areas.*
- *Call for the administrative reports of all the primary health centers for each financial year through the respective gram Panchayat.*
- *Call for the administrative reports of all anganwadi workers for each financial year through the respective gram Panchayat.*
- *Call for any administrative report of any other social sector program which is being implemented at the respective Gram Sabha and the Panchayat at appropriate level.”*

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)]*

Rajasthan PESA

The Panchayati Raj Institution at the appropriate level or the Gram Sabha as may be prescribed shall exercise the power to manage village markets, by whatever name called, subject to such Rules as may be made by the State Government in this behalf [Section 3(k)(iv)].

Legal Issues

The power to manage village market instead of vesting in both the Panchayat at appropriate level and the Gram Sabha have been given to either of the two bodies. This is inconsistent with PESA. Secondly, the power to manage has concomitant power of regulation an establishment which though not been provided in PESA as well, but is imperative to include for clarity and effective management of village markets by Gram Sabha and PAL.



Thirdly, PESA renders unrestricted control of the Gram Sabha and PAL over village markets, however, Rajasthan PESA subjects the exercise of this power to the Rules framed by the State Government. This means that the Gram Sabha and PAL cannot act on their own discretion, which is certainly not the intention of PESA.

In the light of above, following amendments are suggested:

Rajasthan PESA

Delete the provisions of Section 3(k)(iv) and instead insert the following provisions:

(a) Notwithstanding anything contained in Rajasthan Agricultural Produce Markets Act, 1961, in Scheduled Areas, the Gram Panchayat shall manage village markets by whatever name called, under the control and supervision of Gram Sabha.

*Explanation: The power to manage village markets shall include the power to **establish, and regulate** village markets by whatever name called;*

(b) In the exercise of this power Gram Panchayat shall

Specify, with prior consultation with the Gram Sabha the place of setting up such markets, No shops shall be allowed to be opened 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.

The Gram Sabha may also auction the shops in the market area.

The Gram Sabha shall fix the schedule of rate of fee in respect of every such market operating within its jurisdiction such as;

- a. fee for the use of, or for exposing goods for sale in such market*
- b. fee for the use of shops, stalls, stands, pens in such market,*
- c. 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;*
- d. Fees on animals brought for sale into or sold in such market*
- e. 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.

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.

The Gram Sabha shall also fix the days of operation of a village market in a month.



The Gram Sabha may also prohibit the display or sale of any commodity in a village market.

Gram Sabha shall make such Rules for the proper management of the village markets as and when it may deem necessary.

Rajasthan Agriculture Produce Market Act, 1956:

The Rajasthan Agricultural Produce Markets Act, 1956 provides for establishment and regulation of markets for the sale and purchase of agriculture produce.⁴⁰ The Act contains provision regarding the establishment of market areas and market committees, functions and duties of the market committees regarding management of market areas, regulation of trade in the markets, settling disputes, among others.⁴¹ Further, the State Government has the power to prescribe by-laws for the proper functioning of the market committees, regulate trading and to carry out other provisions of the Act effectively.⁴²

This Act does not distinguish between Scheduled and Non Scheduled Areas and vests the power to regulate markets of notified agricultural produce in a Market Committee formed under the Act. The management of these markets is completely under State officials. The agricultural produce that is included in Schedule I of the act is notified agricultural produce. The markets are also set up under this act itself. This committee performs several functions to manage market areas such as leasing of shops, giving license to persons who desire to operate in the market area, controlling market operations, resolution of disputes, and regulation of funds collected from the market operations. It is to be noted that the operation of this Act overrides the power of the Gram Sabha and the Panchayat to set up markets or *melas* in the Panchayat area as per PESA which vests unfettered powers in the Gram Sabha and PAL to manage village markets.

This needs to be amended in light of the of the Provisions of Rajasthan PESA.

The Agriculture Produce Market Act, 1956

Insert proviso in Section 2(vi)

“Provided that market for the purpose of this Act does not include a village market or a gaon haat, bazaar or by any other name called, in Scheduled Areas of Rajasthan”

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)]*

⁴⁰ Preamble, Rajasthan Agriculture Produce Market Act, 1956.

⁴¹ Section 9, Rajasthan Agriculture Produce Market Act, 1956.

⁴² Section 37, Rajasthan Agriculture Produce Market Act, 1956.



In Rajasthan PESA, the power to exercise control over money lending to Scheduled Tribes is vested in Gram Sabha or an appropriate level of Panchayat as may be prescribed.
[Section 3(k)(v)]

Administrative Response

Besides, the Revenue Department issued two notifications in April 2002 vesting the power to control money lending to the members of Scheduled Tribes in the Panchayat Samiti and Gram Panchayat. One of the notifications appointed the Commissioner Tribal Development as the Registrar General, Panchayat Samiti as the Registrar and Gram Panchayat as the Assistant Registrar for the Scheduled Areas under Section 3 of the Rajasthan Money Lenders Act 1963.⁴³

Draft PESA Rules, 2010 give the power to regulate money lending in Scheduled Areas on various tiers of Panchayat and no role has been given to the Gram Sabha. Thus for example, the Panchayat Samiti shall regulate money lending in scheduled Areas as per the provisions of Rajasthan Money Lender's Act, 1963 which itself is not in conformity with PESA. The powers of Assistant Registrar and Registrar under the Rajasthan Money Lender's Act shall be exercised by the Gram Panchayat and Panchayat Samiti respectively.⁴⁴ These Rules are not in conformity with PESA. The requisite amendments are suggested below but before that lets us consider some more legal issues.

Legal Issues:

- Power to exercise control over money lending has not been clearly allocated. Particularly, the parameters of control have not been defined for the Gram Sabha or Panchayat to exercise the power efficiently.
- Besides, the above circular gives the authority to Commissioner Scheduled Tribes for regulating money lending. PESA does not envisage any such role of the Commissioner. Hence the provision is inconsistent and needs to be amended.
- Thirdly, Gram Sabha has not been given any authority over money lending activity in the village. It is our contention that Gram Sabha being a body of the people of the village which are directly affected by money lending should be made responsible for controlling money lending and preventing the exploitation of poor and marginalised. Therefore to incorporate above suggestions following amendments are to be made in the relevant Act.

Rajasthan PESA

Delete Section 3(k)(v) and instead insert the following

“(v-i) The Gram Sabha along with the Gram Panchayat shall exercise control over money lending to Scheduled Tribes.

(v-ii) No money lender doing business in a Scheduled Area shall operate in a village without the

⁴³ Notification No. F.13 (1) Rev-6/2000/13, dated April 17, 2002,

⁴⁴ Rule, 21,22, 23, 24 Draft Rajasthan Panchayati Raj (Modification of Provisions in their Applications to the Scheduled Areas) Rules, 2010.



approval of the concerned Gram Sabha of the village. The money lender intending to operate in a village shall submit an application to the Gram Sabha. The Gram Sabha shall pass a resolution approving or rejecting the application or prescribing conditions. The Gram Sabha shall send a copy of the resolution to the Gram Panchayat within fifteen days of its passing. The Gram Panchayat shall issue a license to the money lender on such terms and conditions as the Gram Sabha may prescribe.

(v-iii) Every money lender operating within the village shall be registered with the Gram Sabha in such manner as the Gram Sabha deems necessary.

(v-iv) The maximum rate of interest shall be decided by the Gram Sabha.

The Rajasthan Moneylenders Act, 1963 and Rules, 1965, also make provisions for regulating and controlling of transactions of money lending in Rajasthan, registration of money lenders, maximum amount of interest recoverable, offences and penalties among others. However, the Act does not take into account the provisions of PESA in Scheduled Areas, where the above powers are vested in the Gram Sabha and Panchayat. Therefore following amendments are suggested:

Rajasthan Money Lender's Act, 1963

Insert Proviso in Section 6

“Provided that in Scheduled Areas, no license or renewal of license for carrying out the business of money lending shall be granted without prior, written approval of the Gram Sabha.”

Gram Sabha shall also issue a certificate of Registration to all the money lenders carrying out their business in the village.

Insert Proviso to Section 7

“For Scheduled Areas, the Assistant Registrar shall issue a license to the money lender as per the procedure prescribed in Section 6 of this Act.”

Insert Proviso in Section 9

“Provided that the power to cancel the license in Scheduled Areas is vested in the Gram Sabha. The Assistant registrar shall not cancel any such license without taking prior, written approval of the Gram Sabha where the money lender was operating.”

Insert subsection (6) in Section 13

“On receipt of an Application for cancellation of the license of a money lender operating in Scheduled Areas, the Assistant Registrar shall convene a meeting of the the Gram Sabha or Gram Sabhas of the village (s) in which he is operating to seek their written consent before cancelling the license. The Gram Sabha (s) shall pass a resolution approving or rejecting the application for cancellation.”

Insert Subsection 3 in Section 16

(3) “In Scheduled Areas, Gram Sabha if it believes that the money lender is carrying on the business of money lending without a license or in contravention of the terms and conditions of license or the provisions of this Act, shall also have the power, after a notice, at any reasonable time to enter the any premises of the money lender to inspect documents.”

Insert subsection (6) in Section 22

“At the end of every financial year, the money lender operating in Scheduled Area shall present



before the Gram Sabha (s) books of accounts and entries pertaining to its respective village. The Gram Sabha shall certify the account books and entries if any and send them to the Assistant Registrar.”

Insert Subsection (5) in Section 29

“The maximum rate of interest of loan advanced to a Scheduled Tribe residing in a Scheduled Area shall be decided by the Gram Sabha of the village where the money lender is carrying out the business of money lending.”

Rajasthan Money Lender’s Rules, 1965

Insert proviso to Rule 5

“Provided that where a money lender intends to operate in Scheduled Areas, the Application for license shall be submitted to the Gram Sabha for approval.”

Insert Rule 5A

The application as per section 6(2) of the Act, for license to carry out the business of money lending shall be made to the Gram Sabha of the village or villages where the applicant intends to carry on the business of money lending. The Gram Sabha shall within one month of receiving the application, approve, disapprove or prescribe such conditions as it may deem necessary. The resolution of the Gram Sabha shall be sent to the Assistant Registrar which is the Gram Panchayat within 15 days of its passing. If the Gram Sabha has approved the application, the Gram Panchayat shall issue the license on such terms and conditions as the Gram Sabha have prescribed.

Gram Sabha shall also maintain a register of the money lenders operating within the village. All money lenders shall obtain a certificate of registration from the Gram Sabha in a form prescribed by the Gram Sabha.”

Insert proviso to Rule 6

“Provided that in case a money lender is operating in Scheduled Areas, such communication shall be sent to the Gram Sabha or the Gram Sabhas of the villages where the new partner or the new person shall carry out the business of money lending.”

Insert the following words in Rule 7

“Money lender shall communicate to the Registrar ‘Assistant Registrar and the concerned Gram Sabha (s)’ any change in his address..... within seven days of such change”

Insert proviso in Rule 8

“Provided that no license of a money lender operating in Scheduled Area shall be renewed by the Assistant Registrar without prior, written approval of the Gram Sabha (s) of the village or villages in which the money lender is operating.”

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 control over local plans and resources for such plans including tribal sub-plans. [Section 4(m)(vii)]

Rajasthan PESA:

The Panchayati Raj Institution at appropriate level or Gram Sabha as may be prescribed in a Scheduled Area shall have the power to exercise control over local plans and resources for such plans including tribal sub plan to the extent and in the manner to be specified by the State Government from time to time. [Section 3(k)(vii)]

Legal Issues

Power to control local plans and resources for such plans has not been clearly delineated between the Gram Sabha and the PRI. Following amendments are suggested.

Rajasthan PESA

Delete provisions of Section 3(k)(vii)] and instead insert the following

“The Gram Sabha along with the Panchayat at appropriate level within which such local plans including tribal sub plans are implemented shall have control 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.”