Assessment of Madhya Pradesh PESA
- Legal Perspective

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February 2011
BACKGROUND

SCHEDULED AREAS

- Scheduled Districts Act, 1874
- Montague–Chelmsford Report
- Government of India Act, 1919 – Wholly Excluded & Modified Exclusion
- Government of India Act, 1935, Backward areas were classified as excluded areas and partially excluded areas; tribal areas
- Cabinet Mission Statement of 1946
- Advisory Committee under the Constituent Assembly (Thakkar Committee)

PANCHAYATS

- Local affairs continued to be regulated by such Panchayats even in the Mughal Period
- Gandhian village republic as the basis of whole constitution
- Article 40 in the Constitution of India – A sop?
- Mehta Committees
- G.V.K.Rao Committee
- Singhvi Committee, 1986
- 73rd Constitution Amendment, 1992
- Andhra Judgment
- Bhuria Committee
- PESA, 1996
Background

• 73\textsuperscript{rd} amendment to the Constitution in 1992 - Part IX added.
• Not automatically extended to scheduled areas due to historical and constitutional reasons
• Bhuria Committee
• Technically, the suggestions were incorporated in the form of exceptions and modifications through PESA
PESA is a converging legislation at the intersection of Scheduled Areas administration and Local Self Government

A top down dictat!

PESA attempts to vest legislative powers in Gram Sabha specifically in areas relating to
- development planning,
- mgt of natural resources and
- adjudication of disputes in accordance with prevalent traditions and customs.
PESA-Fundamental Principles

- State PESA to be in consonance with customary laws, social and religious practices and traditional management practices of community resources.

- The competence of Gram Sabha in safeguarding; preserving traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution - recognised

- **Definition of village:** which shall ordinarily consist of a habitation (group of habitations), hamlet (group of hamlets) comprising a community and managing its affairs in accordance with traditions and customs.
  - Gram Sabha of every such Village
PESA-Allocation of Powers

- Those powers that have been vested exclusively with the Gram Sabha
  - The approval of the developmental plans, programmes and projects for social and economic development
  - Identification or selection of beneficiaries for poverty alleviation and other programmes
  - The granting of certificate of utilisation of funds for plans programmes and projects that are implemented by the Panchayat
PESA-Allocation of Powers

- Those powers that are exclusively vested with the Panchayat at appropriate level (PAL)
  - Planning and Management of Minor Water Bodies
PESA-Allocation of Powers

- Those powers that are vested with the Gram Sabha or PAL
  - Consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected.
  - Prior recommendations - mandatory before granting prospecting license or mining leases for minor minerals
  - Prior recommendations - mandatory for grant of concessions for the exploitation of minor minerals by auction
Powers that are vested in the Gram Sabha and PAL

- Enforcing—prohibition, regulation or restricting the sale or consumption of any intoxicants
- Ownership of minor forest produce.
- Preventing alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of ST
- Control over institutions and functionaries in all social sectors
- Management of village market
- Control over Money Lending
- Control over local plans and resources for such plans including tribal sub-plans
Empowerment

Empowerment of Gram Sabha stands on a different footing from the empowerment of Gram Panchayat. (as the two terms are used interchangeably)

The vesting of powers to Panchayat at appropriate level (used frequently by PESA and State amendments) need not necessarily empower Gram Sabha.
Critical Legal Concerns (Contd)

- **Development Planning and the Gram Sabha**
  
  - Under PESA every Gram Sabha *shall* approve the plans, programmes and projects.
  - Role restricted to granting approvals to ‘decided plans’.
  - Consequences of non-approval?
Critical Legal Concerns (Contd)

- **Beneficiaries.**
  - No guidelines/principles for identification and selection of beneficiaries.
  - Beneficiaries and “other programmes”?
  - Criteria for awarding of certification of utilisation of funds unclear.
  - Whether the Gram Sabha should be involved in budget making process too?
Critical Legal Concerns (Contd)

- **Recommendatory Power of Gram Sabha**
  - While recommendation has been made mandatory whether these recommendations itself are binding or not is unclear.

- **Consultative powers of Gram Sabha**
  - Consultation versus consent
Panchayat Legislation in M.P.

- M.P. Panchayat Raj Adhiniyam, 1993 (M.P. PRA)
- The Panchayati Raj Dwitiya (Sansodhan) Adhiniyam 1997 along with Panchayati Raj (Sanshodhan) Adhiniyam 1999 has amended the Panchayat Act of Madhya Pradesh substantially to conform to the spirit of PESA, and to extend Panchayati Raj to the Scheduled Areas of MP.
Some Questions and Some Observations

- Is PESA in lieu of or in addition to Panchayati Framework?
- M.P. has gone the “in addition to” approach.
- Panchayat Framework Plus
- Should it be a separate “scheduled areas” framework approach?
Schedule – V areas / Districts in the State of M.P.

- Jhabua district
- Mandla district
- Dindori district
- Barwani district
- Sardarpur, Dhar, Kukshi, Dharampuri, Gandhwani and Manawar tahsils in Dhar district
- Bhagwanpura, Segaon, Bhikangaon, Jhirniya, Khargone and Meheshwar tahsils in Khargone (West Nimar) district
- Khalwa Tribal Development Block of Harsud tahsil and Khaknar Tribal Development Block of Khaknar tahsil in Khandwa (East Nimar) district
- Sailana and Bajna tahsils in Ratlam district
- Betul tahsil (excluding Betul Development Block) and Bhainsdehi and Shahpur tahsils in Betul district
- Lakhanadone, Ghansaur and Kurai tahsils in Seoni district
- Baihar tahsil in Balaghat district
Schedule – V areas / Districts in the State of M.P.

- Kesla Tribal Development Block of Itarsi tahsil in Hoshangabad district
- Pushparajgarh, Anuppur, Jaithari, Kotma, Jaitpur, Sohagpur and Jaisinghnagar tahsils of Shahdol district
- Pali Tribal Development Block in Pali tahsil of Umaria district
- Kusmi Tribal Development Block in Kusmi tahsil of Sheopur district
- Karahal Tribal Development Block in Karahal tahsil of Sheopur district
- Tamia and Jamai tahsils, patwari circle Nos. 10 to 12 and 16 to 19 villages Siregaon Khurd and Kirwari in patwai circle No. 09 Villages Mainawari and Gaulie parasia of patwari circle No. 13 in Parasia tahsil, village Bamhani of patwari circle No. 25 in Chhindwara tahsil, Harai Tribal Development Block and patwari circle Nos. 28 to 36, 41, 43, 44 and 45 B in Amarwara tahsil

Bichhua tahsil and patwari circle Nos. 05, 08, 09, 10, 11 and 14 in Saunsar tahsil, Patwari circle Nos. 01 to 11 and 13 to 26, and patwari circle No. 12 (excluding village Bhuli), village Nandpur of patwari circle No. 27 village Nilkanth and Dhawdikhapa of patwari circle No. 28 in Pandurna tahsil of Chhindwara district.
Definition of village more inclusive
- the concept of village not only includes revenue village but also revenue village remains unchanged as it is still based on population
- But does it conform to PESA?

Composition of Gram Sabha
- revenue village or forest village – M.P

Safeguarding Customs and Resources
- “Gram Sabha **shall** safeguard – M.P.
Customary Modes of Dispute Resolution

- The Gram Sabha shall endeavour to take measures to safeguard & preserve:
  - Our traditions and customs
  - Our cultural identity
  - Our community resources
  - Through the Customary mode of dispute resolution.

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

- Gram Sabha to lay down not only the principles for identification of schemes, but also rank them on the basis of priority. (M.P.)

- Gram Sabha has to, in addition to certifying proper utilization of funds, also ascertain the proper utilization of funds. (M.P)

- Facilitate Accountability.
Powers Exclusive to Gram Sabha

- Grama Sasan has been empowered
  - Approval of plans; Criteria for approvals?
  - Identification of beneficiaries; Criteria for identifying beneficiaries?
  - For granting utilisation certificates; Manner in which UC should be given?
- Administrative Response: Need operation guidelines!
- Additional provisions:
  - Powers to levy charges, fees
  - Budgetary powers of Gram Sabha
Consultation before Land Acquisition

- PESA–GS or PAL

- M.P. The Gram Sabha or the Panchayats at the appropriate level shall be consulted

- The Gram Sabha in Scheduled Areas shall manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the time being in force; (M.P.LRC; etc.)

- Administrative Instructions issued but Act not amended.
Planning and Mgt of Minor Water Bodies at PAL

- What are minor water bodies?
- M.P– GS to Advise GP + ZP to “Plan manage & Own” upto a specified area
- The Gram Sabha in Scheduled Areas shall manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the time being in force;
- Role of PIM; WUA; WS and PRIs
M.P Sinchay Prabandhan Me Krishkon Ki Bhagidari Adhiniyam 1999 provides for farmers’ participation in the management of irrigation system. For this purpose areas have been de-alienated as “water users area” and a “water users association” is also formed.
Excise and PESA in M.P.

- **M.P Excise (2nd Amendment) Act of 1997** to include special provisions regarding sale and manufacture of intoxicants and the power of Gram Sabha in Scheduled Area vis-a-vis the same.
- Firstly, in respect of manufacture of country spirit and its distillation, possession and consumption the Excise Act is not applicable to the members of Scheduled Tribe in the Scheduled Areas.
- Manufacture of country spirit in domestic consumption for consumption at social and religious function is permitted within Scheduled Area. However, sale of country liquor is prohibited.
- The Gram Sabha has been given power to regulate and prohibit manufacture and sale as well as consumption of intoxicant within the territorial areas of the Gram Sabha.
- Note: this power is not retrospective and there is a clear proviso, which mandates that an order of prohibition passed by the Gram Sabha, shall not be applicable to any manufactory, which has been established prior to the coming of the said amendment.
CENTRAL PESA AND STATE RESPONSE FORESTS–PEOPLE

- Under PESA every Gram Sabha shall approve the plans, programmes and projects. JFM?, Forestry projects? Working plans, micro plans?
- Ownership of Minor Forest Produce
  - N.P., SANCTUARY, RF, PF, FV, VF?????
  - OR PANCHAYAT FOREST ONLY?
The State of M.P has not transferred the power of ownership of MFP under the State PESA.

- Revenue ? Nationalisation of NTFP?...??
- Legally can be challenged as it repugnant to the mandate of Central PESA.

The **Gram Sabha** in Scheduled Areas shall manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the time being in force; -FCA, IFA etc.
PESA–FORESTS–PEOPLE–M.P

- ROLE OF SUPREME COURT ENCROACHMENT, CENTRALLY EMPOWERED COMMITTEE, CLARIFICATIONS IN 2002
- WHO IS AN ENCROACHER?
- M.P.– Orange Areas??; Section 4 (1) Areas in M.P.??
Prevention Land Alienation and its restoration

PESA–GS and PAL

- M.P……..?

The *M.P Land Revenue Code (2nd Amendment) Act of 1997* has amended the Section 170B of the M.P Land Revenue Code, 1959 for special provision for land alienation vis–a–vis the Gram Sabha.

If a Gram Sabha in a Scheduled Area and any person other than a member of aboriginal tribe is in possession of such land without any lawful authority then such land shall be restored to the tribal person to whom it originally belongs.

In case the Gram Sabha fails to restore the possession of such land such matters will be referred to the Sub Divisional Officer who has been given a time limit of restoring possession within three months from the date of receipt of reference.
Field Observations-

- Staffing pattern and Staff Approach
- District Administration Perspective
  - Lack of clear directions from state administration on PESA and its applicability
  - Inadequate Orientation of District Administration on PESA and its applicability in a Scheduled Area Context: Prior Orientation Required
  - An Instruction Manual on Scheduled Area Administration
    - constitutional obligations, concept and origin of Scheduled Area, the essential ingredients of Scheduled Areas administration, the important principles of PESA, the State Response on both legislations as well as administrative instructions in the form of letters, circulars, notifications, the role of the Governor, the role of the Tribes Advisory Council (TAC)
Field Observations

- Need for revision of allocation of powers in the form of new instructions in Scheduled Area as per PESA and its conformity legislations in the State
  - Earlier Admin Directions need to be revised in Sch Areas
- Specialist Three Phase and Three Levels Training on PESA needed
  - top district administration; Block Level with Block Development Officers, Panchayat Samiti Members, and NGOs as facilitators; Gram Panchayat and Gram Sabha level (Palli level)
Field Observations

- Externally Aided Programs too do not necessarily take into account the PESA uniqueness.
- Special CSS Programs do not take into account PESA uniqueness: PESA too does not distinguish tribes for its implementation (PTGs and non PTGs) (LSDA E.g)
- Administrative units esp at Block Level need to be based on PESA frame and not on traditional PRI structures.
- Fixation of Price for leasing of minor water bodies, minor minerals, village markets and MFP: Still under administrative control.
Some conclusions

- There is a clear need to distinguish scheduled areas administration from non scheduled area administration
- From programmatic mode to a holistic scheduled area development
- NTFP; Minor water bodies; Minor minerals: The focus must shift from resource extraction and use mode to an overall management on a sustainable basis
- Land alienation, land acquisition- operational guidelines needed.
THANK YOU
FOR YOUR PATIENCE!