

CHAPTER-5: STRENGTHENING AND REFORMING THE PESA REGIME

Of late a number of key Ministries of Government of India have been seized with a frenzied drive to properly implement the provision PESA Act 1996 in the Scheduled Areas of the country, to amend the Act to make it more community friendly, to prod the concerned States to comply with the mandates of PESA in legislation and at ground level, and as well to review and revise the concerned central laws in the light of the mandates of PESA. The most compelling reason behind such a spirited move by the Government of India is the growing perception in official circles that the proper implementation of PESA can effectively checkmate the growing spread of extremism across the country, especially in the Scheduled Areas. This fact is very much evident in the Circular Letter issued by Sri A.N.P Sinha, Secretary Ministry of Panchayati Raj, GoI to the Chief Secretaries of all the 9 PESA States {Vide No. N-11012/1/2007-PESA (Pt) Dated: 21st May, 2010, Subject- Effective implementation of PESA particularly in the context of prevailing Extremism}, which inter alia mentioned, *“It was expected that PESA would lead to self-governance and empowerment of the people. However, implementation of the Act has not been satisfactory. The rights, livelihood and habitat of the people in these Areas, therefore, continue to be under stress, leading to disaffection with the system. Of 94 PESA districts, 32 have been identified as Extremist Affected Districts (EADs). Of 76 EADs, 32 are PESA districts. Of 34 Most Extremist Affected Districts, 19 are PESA districts. Not surprisingly, various Expert Committees (Annex-II) have recommended implementation of PESA in letter & spirit. There is evidently, an urgency in the implementation of PESA”*.

Recent Expert Bodies on PESA

The above letter at Annexure-II lists the 7 expert bodies that have gone at length into the tricky issues of PESA and extremism interface, which are as follows:

- (a) The Seventh Report of the Second Administrative Reforms Commission, (2nd ARC) ‘Capacity Building for Conflict Resolution’;
- (b) The Report of the Expert group constituted by the Planning Commission on ‘Development Challenges in Extremist Affected Areas’;
- (c) The Standing Committee on Inter Sectoral Issues relating to Tribal Development on Raising Standards of Administration in Tribal Areas (known as Mungekar Committee);
- (d) The 2nd ARC in its Sixth Report entitled ‘Local Governance’: An Inspiring Journey into the Future’;
- (e) B.D. Sharma Sub-Committee to draft guidelines to vest Gram Sabhas with powers envisaged in PESA;
- (f) A.K. Sharma Committee on ‘Issues relating to Minor Forest Produce in PESA States’;
- (g) Raghav Chandra Committee on ‘Land Alienation, Displacement, Rehabilitation and Resettlement’.

Fifth Schedule and PESA

Relying upon the findings of the above expert bodies, the said Circular letter admitted that the Schedule V Areas of 9 States are characterized by poverty, illiteracy, weak infrastructure and deprivations in general. Given the vulnerability of the people, Schedule V of the Constitution makes special provisions such as: (a) Report by Governor to the President regarding the administration of these Areas, (b) Tribes Advisory Council to advise Governor on matters pertaining to the welfare and advancement of the STs, (c) Direction by Governor through public notification that any particular Act of parliament or of the State Legislature shall or shall not apply to a Scheduled Area or any part thereof, (d) Governor to make regulations for the peace and good government, (e) Union Government to give direction to the State as to the administration of these Areas.

The circular letter further went on to say, nevertheless, pressure on natural resources in these Areas continued due to the large projects being set up therein and unscrupulous elements indulging in illegal mining & forest felling. Land alienation and exploitation also continued. This led to dislocation of the communities and loss of major sources of livelihood. It was, therefore, critical that customs, rights and livelihoods of these people are protected through their empowerment. Accordingly, PESA was enacted in 1996 which extended Part IX of the Constitution to the Schedule V Areas and provided for people-centric governance and people’s control over community resources and their life, with central role to the Gram Sabhas.

The circular letter added, the Gram Sabhas under PESA are deemed to be ‘competent’ to safeguard and preserve the traditions of their people, community resources and customary mode of dispute resolution. The Gram Sabhas further have: (a) mandatory executive functions to approve plans of the Village Panchayats, identify beneficiaries for schemes, issue certificates of utilization of funds, (b) right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation, and prospecting licenses/mining leases for minor minerals, (c) power to prevent alienation of land and restore alienated land; (d) power to regulate and restrict sale/consumption of liquor; (e) power to manage village markets, control money lending to STs; (f) ownership of minor forest produce; (g) power to control institutions and functionaries in all social sectors; and(h) power to control local plans and resources for such plans including TSP, etc.

Compliance needed with key Provisions of PESA

In view of the above facts, the circular letter drew attention of the PESA states to the note attached thereto at Annexure-IV, titled “Compliance with key provisions of PESA based on the PESA Act and Model PESA Rules.” This note details the essential features of PESA that need to be complied with in relevant statutes/rules/guidelines and covers (a) Delimitation of Villages and Gram Sabhas, (b) Procedure to be followed for consultation with Gram Sabha for land acquisition and defining minor minerals and securing recommendation of Gram Sabha [Section 4 (k) and (l)], and (c) Endowing Gram Sabhas with powers and authority under Section 4m (i) to 4m (v) relating to Excise, MFP, Land alienation, Village markets and Money lending.

I. Delimitation of Villages and Gram Sabhas as per PESA-

(1) As per Section 4(b) of PESA Act, a village shall consist of a habitation or a group of habitations, or a hamlet or a group of hamlets, comprising a community and managing its affairs in accordance with its traditions and customs. As per Section 4(c), every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayats at the village level. However, this connotation of the Gram Sabha, which is specific to PESA has not been implemented in several States, and the existing definition of the revenue village is being used to convene Gram Sabhas. (2) It is therefore suggested that State Election Commissions (SECs) be entrusted with examination and identification of villages as per PESA in Scheduled Areas, based on community demand. A time period may be designated for members of a Gram Sabha of any habitation/hamlet to apply to constitute a separate village, after passing a resolution to that effect either by consensus or three fourth majority. This exercise should be preceded by provision of information of the process and discussion regarding the same in the Gram Sabhas. State Election Commissioners may enquire into these applications examining records, public hearing etc. and in case of a favorable outcome of the inquiry the habitation may be notified as a village.

II. Consultation with Gram Sabha for Land-Acquisition and regarding Minor Minerals-

1. Land Acquisition:

The following procedure should be followed for consultation with Gram Sabha before acquisition of land in Scheduled Areas and for relief and rehabilitation (R & R) and sustainable livelihood plan of persons affected as a result of such acquisition:

- All Gram Sabhas that have persons affected by a proposed project should be consulted before acquisition proceedings are initiated. Persons affected would include all persons whose livelihoods and / or habitats are affected by the project.
- Where persons affected by the proposed project belong to more than one Gram Sabha, the appropriate level of Panchayat should also be consulted in addition to the Gram Sabhas.
- The following information shall be furnished by the acquisition authority to the Gram Sabhas and the Panchayats at the appropriate level:
 - i) Full details of project for which land is proposed to be acquired;
 - ii) Full particulars of the land proposed to be acquired;
 - iii) Justification as regards the area of land required;
 - iv) Full details of the possible impact of project including land likely to be affected, social and environmental impact, new people likely to settle in village;
 - v) Proposed compensation, job opportunities likely to be created for people in the village
 - vi) R & R and sustainable livelihood plan.
- After getting complete information, the Gram Sabhas concerned will be competent to ask for information from or to summon the representatives of the authorities concerned to examine them either individually or collectively. It will be mandatory for all such persons to furnish clear and correct information.
- The Gram Sabha after considering all the facts, shall make recommendations regarding the proposed land acquisition, R&R and sustainable livelihood plan of persons displaced.
- The recommendations of the Gram Sabha shall be considered by the the authorities concerned with land acquisition, R & R and sustainable livelihoods.

- In case the authority concerned is not in agreement with the recommendations of the Gram Sabha, he will send the case again to the Gram Sabha for reconsideration.
- If after a second consultation, the authority concerned passes an order against the recommendations of the Gram Sabha, he shall record the reasons for doing so in writing.
- The progress of rehabilitation and sustainable livelihood plan shall be placed before the Gram Sabha after every 3 months from the date of notification for land acquisition.
- If in the opinion of the Gram Sabha, suggested measures regarding rehabilitation and sustainable livelihood are not followed, the Gram Sabha may inform the State Government in writing regarding the same, and it will be mandatory for the State Government to take appropriate action.

2. Minor Minerals:

- For purpose of PESA, the term “minor minerals” shall mean building stones, gravel, ordinary clay, ordinary sand and any other minerals which the Central Government has declared as minor minerals through notifications.
- The Gram Sabha and, if necessary, Panchayats at appropriate level shall be consulted while planning for the excavation and use of all the minor minerals including soil, stones, sands, etc to be found in its area. The plan for exploitation of minor minerals may include excavation area, the type of area, and management of ill effects of identification of excavation such as existence of pits, water shortage, reduction in vegetation, effect of ash or smoke on fields, etc;
- The villagers may use minor minerals for their individual needs as per the traditional practice with the permission of Gram Sabha. The Gram Sabha may make regulations in this regard.
- The Gram Sabha may fix the responsibilities such as filling up pits, planting trees, constructing ponds etc. by persons undertaking excavation to compensate for the ill effects of excavation.
- The following procedure shall be followed for securing recommendations of Gram Sabha for grant of prospecting license or mining lease for minor minerals and grant of concession for the exploitation of the minor minerals by auction:-
 - Any authority may award prospecting license, mining lease for or concession for exploitation of minor minerals by auction only in consultation with Gram Sabha.
 - The authority concerned that proposes to sanction a prospecting license or mining lease or grant of concession for minor minerals by auction should compulsorily make available to the Gram Sabhas within whose jurisdiction the proposed mining area falls, all relevant information prior to grant of prospecting license/mining lease/ concession. This information should, among others, contain:
 - (i) The manner in which the interests of the village community will be affected;
 - (ii) Measures to safeguard the livelihoods of the persons in the affected zone;
 - (iii) Measures to augment the resources of community through a stake in the revenue; &
 - (iv) A careful assessment of the economic, environmental and social impact on the affected persons.
 - After considering the above information, the Gram Sabha may make its recommendations.
 - The Gram Sabha may impose conditions for protecting the environment, employment, etc in all cases.
 - The recommendations of the Gram Sabha shall be binding unless they are reversed by a competent authority for reasons to be recorded in writing and approved by the State Government.

III. Endowing Gram Sabhas with Powers and Authority under Section 4m (i) to 4m(v)

1. Intoxicants

- The Gram Sabha is to have full control over all the aspects related to any type of intoxicant within its jurisdiction. It means that the Gram Sabha may:
 - (a) completely stop the relaxation of allowing members of Scheduled Tribes to make local liquor for their own use or impose any type of ban on it in the village.
 - (b) give instructions to stop the sale of any type of intoxicant from a shop or in any other manner.
 - (c) impose a ban on bringing in any type of intoxicant or taking it outside the village territory.
 - (d) prohibit or impose a limit on the storage of intoxicants at any place.
 - (e) completely stop the use of liquor or other intoxicants in its village territory or impose any restriction.
 - (f) prohibit the sale of Mahua, Jaggrey etc. which are used in making liquor in the village or in the market.
 - (g) regulate the use of Taadi, Sulphi etc.
- Without the concurrence of the Gram Sabha, no new factory for manufacturing liquor or other intoxicants or shop for the sale of the same may be established.
- In order to continue a liquor shop for any year, a proposal would have to be presented by the Excise Department to the Gram Sabha. A liquor shop may continue only if a resolution is passed in the Gram Sabha to allow continuing the sale of liquor.

- The views of the women in the Gram Sabha will be given primacy in the matter. This may be ensured by forming an 'Intoxication Control Committee' of the Gram Sabha with adequate membership of women.

2. Minor Forest Produce

- MFP should be defined as per the Forest Rights Act, 2005 in all laws regulations.
- Before chalking out the departmental programme for forests and exploitation of MFP it will be compulsory for the Forest Department to consult the Gram Sabha.
- The management of forests will be done to protect the right of ownership, access to collect, use and dispose of MFP as per the Forest Rights Act, 2006.
- The Gram Sabha may chalk out an action plan about the use or exploitation of MFP in consultation with the Forest Officer concerned.
- One or more Gram Sabhas together, in consultation with the Forest Department, may decide the minimum price for the purchase or exchange rates of MFP.
- Gram Sabha may determine the royalty payable by the collector or the trader on MFP.
- It will be mandatory for all departments and institutions to give details to Gram Sabha before taking any MFP collected on the basis of any Act, rule or administrative instructions, outside the area of the Gram Sabha and obtain clearance from it for the same.
- If the State Government organizes the trade of any MFP in order to protect the interests of the people, that trade will be treated as trade carried out on behalf of people. But prior approval of the Gram Sabha will be needed for the proposed arrangement. On the basis of suggestions of the Gram Sabha, necessary changes may be carried out. Gram Sabha and the collectors will have complete rights over profits.
- For meeting the villagers' requirements such as grazing, fuel wood making houses and ploughs, Gram Sabha may chalk out a minor forest scheme for the use of forest resources used traditionally by the people in consultation with the concerned Forest Officers. Under this scheme every person will be able to use the resources after getting permission from the Gram Sabha.

3. Land alienation

(a) Land records

- The Gram Sabha should be empowered to review records of the village land to ensure that the farmers' names are correctly recorded and records are properly maintained
- Powers regarding mutation and partition of land in undisputed cases may be transferred to the Gram Panchayat, for disposal under the overall supervision of the Gram Sabha.
- It should be made mandatory for village officials to take permission from Gram Sabha prior to recording any kind of transfer of land.

(b) Prevention of land alienation

- The Gram Sabha should be empowered to ensure that no land belonging to STs is transferred to non ST persons.
- The Gram Sabha should be authorized to enquire into any land transactions, on the basis of complaints or suo motu.
- If the Gram Sabha is of the opinion that attempts are being made to alienate lands belonging to STs, it should be empowered to issue instructions to prohibit the transaction.

(c) Restoration of alienated land

If the Gram Sabha finds that any person other than an ST is in possession of any land belonging to an ST without any lawful authority, it should be empowered to restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs.

4. Money Lending

- The Gram Sabha should be empowered to take action to protect interests of people in relation to money lending.
- Gram Sabha should be empowered to decide the condition of maximum interest and repayment in the matters of private transaction.
- Gram Sabha may ask for any information regarding the loan extended by any person or institution to the villagers, its conditions, repayment status etc. and enquire into any complaints and given instructions to any person institution in case of injustice.

5. Management of markets

- Gram Sabha should be competent to manage and regulate any market in its jurisdiction. This would cover all aspects of management of markets including:
 - (a) opening of shops and setting up of facilities,
 - (b) imposing restriction on sale of harmful products,

- (c) ensure fair market price for products traded,
- (d) ensuring use of correct weight and measures,
- (e) fixing area of the operation of market,
- (f) placing restriction on sale and purchase activity outside the market area, and
- (h) other activities for the development of markets.

• All revenues from market operations shall flow to the concerned Gram Sabha to improve the facilities available for marketing.

Urgent Measures necessary for compliance to PESA

The above mentioned circular observed, *“In the aforesaid background, the States may take the following steps to operationalise PESA. MoPR is separately examining the Central laws and policies related to Forest, Mining, R&R etc. for PESA compliance”*.

Legislative compliance

- (i) Adopt Model PESA Rules (available at panchayat.gov.in) circulated by MoPR with suitable modifications so that the field functionaries have a clear framework for implementing PESA. In the meantime, use the note “Compliance with key provisions of PESA” (at Annex-IV) for issuing executive instructions in regard to the key issues.
- (ii) Amend State Panchayati Raj Acts for consonance with PESA. Particularly important here is the definition of ‘village’ and powers of the Gram Sabha. State Election Commission (SEC) could be given the responsibility of delimitation of ‘Villages’ as suggested in the note.
- (iii) Amend laws, rules and executive instructions on Mines & Minerals, Minor Forest Produce, Excise, Money Lending etc. on the lines of the enclosed note.
- (iv) Expedite comments on the amendments to PESA proposed by MoPR for removing certain infirmities.

Effective Functioning of the Gram Sabha

- (v) Empower the Gram Sabha and ensure its effective functioning. Follow the guidelines issued by MoPR on 2nd Oct., 09 in this regard. Undertake special programmes to acquaint the Gram Sabhas of their rights and duties. Develop appropriate training and informative material in the regional language. Identify, train and deploy a social mobilizer in each Gram Sabha for activating the Gram Sabha.
- (vi) Conduct regular training programmes on PESA for State and Panchayat functionaries (both elected and officials) to sensitize and educate them on PESA with focus on the role and conduct of the Gram Sabha.

Administrative Measures

- (vii) Since implementation of PESA involves several departments, constitute a Committee headed by the Chief Secretary with membership of the relevant departments to review it every three months. Involve reputed Experts for getting alternative perspectives. Form similar committees in the districts.
- (viii) Activate Tribes Advisory Councils & Tribal Research Institutes.
- (ix) Include a prominent section on the implementation of PESA in the Annual Governor’s Report, as mandated in Schedule V.
- (x) Strengthen Administrative machinery in the PESA areas through filling up all vacancies, creation of separate cadres, hardship allowance, preference in education, accommodation etc.
- (xi) Create Information-cum-grievance redressal mechanisms at various levels where persons dissatisfied with the implementation of PESA may register their grievances and obtain advice /justice.

Issues requiring urgent action

The GoI’s circular letter in a further effort to underline its priority concerns urged the PESA States to urgently review the position particularly on the following issues in the light of the enclosed note on compliance:

- (a) Mandate SEC to delimit ‘villages’.
- (b) Activate Gram Sabhas in a Mission Mode and enable it to exercise its powers & functions including in relation to planning & implementation of Central/State schemes, grant of UCs and dispute resolution.
- (c) Ensure that complete information about the land to be acquired and impact of the proposed project, is placed before the Gram Sabha and its recommendations are generally followed.
- (d) Incorporate definition of MFP, as provided in the Forest Rights Act, 2005, in all laws and rules. Undertake management of MFP with the consent of the Gram Sabha and in case MFP is collected by a para-statal organization, the net income should go to the people.
- (e) Enable the Gram Sabha, particularly women, to take decisions regarding the opening and continuance of liquor shops, sale of intoxicants, etc.
- (f) Furnish information as per the enclosed questionnaire for briefing on the current status of implementation of PESA and the follow up action taken if any.

Proposed Amendment to PESA Act 1996

In addition to the bunch of suggestions as to how the PESA states ought to comply with the provisions of PESA Act by way of revisiting the existing legislation and administrative arrangements, the above circular letter from Govt of India also proposed a table of amendments to PESA Act 1996, which should be carried out by the Parliament in due course. The said Table mentioned the Amendment of the concerned Sections and Clauses of PESA Act along with the rationale of each such amendment proposed.

Amendments proposed in the PESA Act

S.No.	Reason for amendment	Proposed amendment
1.	Some terms used in the Act have not been defined in Section 2, which has resulted in lack of implementation in keeping with the spirit of the Act.	The following definitions may be added to Section 2 of the Act: (ii) Community resources: Community resources include land, water, forest, minerals and other resources located in the territorial domain of the community. (iii) Consultation: Consultation means mandatory consultation on the basis of requisite information and transparency that shall be binding on the authorities concerned unless modified or rejected for reasons to be recorded in writing. (iv) Panchayat at appropriate level: Panchayat at appropriate level means the lowest tier of Panchayat which can perform a particular function or in whose area a particular resource is situated.
2.	Section 4 stipulates that the Legislature of a State shall not make any law which is inconsistent with the features of PESA. This formulation does not clearly state the rights of the Gram Sabha and Panchayats. It needs to be made explicit, to remove ambiguity.	It is proposed that rights, duties and powers under PESA may be stated in the Act itself. The wordings in Section 4 of the Act may be changed to: 'Notwithstanding anything in the Constitution or any other law in force, (i) the following shall be rights, duties and powers entrusted to the Gram Sabha and Panchayat at the appropriate level; and (ii) the Legislature of a State shall not make any law under that Part which is inconsistent with any of them, namely :-
3.	The definition of village in Section 4 (b) can be interpreted so that the 'village' specifies only the residential area.	The following may be added to Section 4 (b) : The geographical jurisdiction of the village shall be deemed to extend to the physical boundaries that may have been so accepted by communities concerned according to their tradition.
4.	Section 4 (b) does not suggest a modality for notifying a village as per the definition.	The following provisions may be added to Section 4 (b) : (i) if members of a Gram Sabha of any habitation/hamlet desire to constitute a separate village, the members of that habitation/hamlet may pass a resolution to that effect either by consensus or three fourths majority. All such application shall be enquired into and decided by the State Election Commissioner. (ii) the Gram Sabhas of a group of villages may, if so supported by at least two third majority of each Gram Sabha, either constitute a Pargana Parishad, or if already existing, inform the District Magistrate in writing about its existence. The Pargana Parishad shall comprise of at least two representatives of each village elected by the Gram Sabha.

5.	There is need to explicitly state that the Gram Panchayat or any other village level committee will function under the overall superintendence and control of the Gram Sabha.	The following may be added to Section 4(c):- (i)The Gram Sabha may constitute Standing/ad hoc Committees for discharging their respective responsibilities from amongst their members. (ii)The members of such Committees of the Gram Sabha shall be elected in an open meeting of the Gram Sabha from among members of the Gram Sabha. (iii)The Gram Panchayat or any village level committee constituted under any statute or executive instruction by any government department or any other authority for any purpose, shall function under the superintendence, control and direction of the Gram Sabha.
6	Section 4 (d) deems the Gram Sabha to be competent to safeguard the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution but it has no enabling provision for how a Gram Sabha may exercise this competence. There is no provision for appeal against the decisions of the Gram Sabha, which goes against the principle of checks and balances over all authority.	The following may be added to Section 4 (d): Provided that any person aggrieved by any decision of the Gram Sabha, or inaction on its part, or irregularity in the conduct of meetings or such like, can after inviting attention of the Gram Sabha in that regard and remaining dissatisfied with its conduct, make an appeal before the Pargana Parishad if constituted or the Sub-Divisional Magistrate, in case the Pargana Parishad is not constituted, whose decision in that regard shall be final and binding on the Gram Sabha. Provided that a second appeal shall lie to the District Magistrate regarding the decision of Pargana Parishad or the Sub-Divisional Magistrate as the case may be in case there is an infringement of law.
7.	The role of the Gram Sabha in scrutiny of activities of various agencies including Panchayats, government departments and corporate bodies through social audit needs to be defined explicitly.	The following may be added to Section 4 (e): iii. conduct regular social audit of works and programmes taken up in the village by any Panchayat State, corporate or private agency whatsoever;
8.	The words 'be required to' in Section 4(f) are unnecessary.	Words "be required to" in Section 4 of Clause (f) be deleted.
9	Section 4 (i) does not articulate clearly that the Gram Sabha as	Section 4(i) needs to be amended as: (i) the Gram Sabhas and, if necessary, the Panchayats at the

	<p>well as Panchayats at the appropriate level have to be consulted before land acquisition and the consent of the Gram Sabha is mandatory.</p> <p>Further, it also needs to be clarified that all Gram Sabhas affected by land acquisition projects need to be consulted and all facts regarding displacement and rehabilitation programmes, especially sustainable livelihoods of displaced people, have to be placed before the Gram Sabha.</p>	<p>appropriate level depending on the geographical spread of the proposed activity, in the zone influence of any land acquisition project, shall be consulted before taking a decision for issuing any notification for the acquisition of land in the Scheduled Areas for any purpose and regarding the rehabilitation and sustainable livelihood plan. Full facts about the project, its zone of influence, its economic impact and rehabilitation and sustainable livelihood plans shall be placed before the Gram Sabha.</p> <p>Explanation: The recommendations of the Gram Sabhas shall be binding on all authorities unless it is decided otherwise by the State Government for reasons to be recorded in writing.</p> <p>(ii) it will be mandatory for the agency acquiring land to place the progress of the rehabilitation and sustainable livelihood plan before the Gram Sabha after every 3 months from the date of notification for land acquisition.</p> <p>(iii) If the Gram Sabha is of the view that appropriate steps for the rehabilitation and sustainable livelihood are not taken, the Gram Sabha may recommend suitable measures.</p> <p>Provided that if in the opinion of the Gram Sabha, suggested measures are not followed, the Gram Sabha may inform the State Government in writing regarding the same, and it will be mandatory for the State Government to take appropriate action.</p>
10	<p>Section 4(j) provides that the planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level. It needs to be clarified that these shall vest with the Gram Sabha, and if necessary, with the Panchayats at the appropriate level.</p>	<p>Section 4(j) be replaced as:</p> <p>planning and management of minor water bodies in the Scheduled Areas shall vest in Gram Sabha and, if necessary, the Panchayats at the appropriate level depending on the spread of the water body;</p>
11.	<p>In Section 4(k) and 4(l) provide that the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals, and</p>	<p>Section 4(k) may be amended as:</p> <p>the recommendation of Gram Sabha and, if necessary, the Panchayats at the appropriate level depending on the spread of the proposed project shall be mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas;</p> <p>Provided that the recommendations of Gram Sabha shall be binding unless they are reversed by a competent authority for</p>

	concession for exploitation of minor minerals respectively. It needs to be clarified that the Gram Sabha has to be consulted, and its recommendations are mandatory unless there are sufficient reasons to do otherwise.	reasons to be recorded in writing and approved by the State Government. Section 4(l) may be amended as: the prior recommendation of the Gram Sabha and, <u>if necessary</u> , the Panchayats at the appropriate level shall be mandatory for grant of concession for exploitation of minor minerals by auction; Provided that the recommendations of Gram Sabha shall be binding unless they are reversed by a competent authority for reasons to be recorded in writing and approved by the State Government.
12.	In Section 4 (m) (v), the words ‘control over money lending’ are too general.	In Section 4 (m) (v) , the words ‘control over money lending’ may be substituted by ‘take action to protect the interests of tribals in relation to money lending’.
13.	An important issue in Schedule V areas in the lack of protection of the rights of people who migrate for work.	A right of the Gram Sabha to be kept informed about migrating workers may be created by adding [section (m) (a)] as follows: The Gram Sabha shall be kept informed by the concerned about workers, including unmarried women and minors, taken out of their home district by any person for employment about the nature of work, wages and other working conditions;
14.	Section 5 needs to indicate a time line whereby all Acts inconsistent with this amendment Act shall cease to be valid.	In Section 5 the following clause may be inserted after the proviso: Provided further that the provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this amendment Act receives the assent of the President, which is inconsistent with this amendment Act, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this amendment Act receives the assent of the President;
15.	PESA does not confer rule making powers to the State Governments. Since a major problem in implementation of the Act has been that such rules have not been framed, and subject laws have not been amended, this needs to be made mandatory.	Section 6 may be added to the Act as follows: It shall be mandatory for State Governments to frame rules as per this Act and for the Central and State Governments to amend subject laws as per the provisions of this Act within six months of this Amendment. If rules are not framed by the State Government within six months of the passing of this Act, the model rules framed under PESA by the Central Government Annex – IV shall apply.

PROPOSED MODEL RULES UNDER PESA ACT

The PESA Act does not specify rule making powers or provide a time period by which the States have to frame rules. States have therefore not framed any rules under PESA as such, though they have effected some amendments in their respective Panchayat laws purportedly in compliance to the mandates of PESA Act. The said amendments by the States fall far short of the letter and spirit of PESA too. Admitting this fact, Sri A.N.P Sinha, Secretary Ministry of Panchayati Raj, GoI in his Circular Letter Dated 31st March, 2010 on the Subject ‘Amendment to the Panchayats (Extension to Scheduled Areas) Act ,1996’ stated inter alia, “*Ministry of Panchayati Raj (MoPR) has taken up the issue of implementation of PESA with the States in various ways. Model guidelines to vest Gram Sabha with powers under PESA called the ‘Gram Sabha Niyam Samhita’ as well as model rules under PESA have been drafted and circulated to the PESA States. MoPR had commissioned two studies on PESA compliance of Central and State laws respectively and circulated these to States and Central Ministries. The States as well as Central Ministries have been urged to frame rules under PESA and amend subject laws relating to forests, excise, mining,*

etc. to bring them in line with its provisions. MoPR has also supported States in holding consultation workshops with the Departments concerned with the subject laws. . . In spite of the critical importance of implementing PESA in the Schedule V areas and the efforts made by MoPR, there have been problems and gaps. These include: a) The PESA Act does not specify rule making powers or provide a time period by which the States have to frame rules. States have generally not framed appropriate rules under PESA, and therefore the official system has not operationalized PESA. While draft model rules for PESA have been framed by MoPR and circulated to the States, the response is yet to come forth. b) State and Central subject laws relating to mines and minerals, forests, land acquisition etc. are not PESA compliant. In spite of repeated urging by MoPR, appropriate action in this regard has not been taken. c) The wordings of some sections of the PESA Act have been interpreted against the spirit of the Act. Particularly, as the Mungekar Committee has observed, the States in many cases have taken advantage of the flexible provision of 'Gram Sabha or Panchayats at the appropriate level' in PESA and used the discretion in favour of Panchayats, which goes against the basic tenets of PESA. d) There is no provision for appeal against the decision of the Gram Sabha, which is not in conformity with the democratic process and introduces an element of absolute power, rather than checks and balances on power of institutions”.

The above Circular contained the Draft Model Rules under PESA on which the response of the States had earlier been sought. The Draft Model Rules is a comprehensive document consisting of 81 Sections placed under 13 Chapters. The Chapter-wise Index of the Sections of the said Draft Model Rules is as follows:

I. INTRODUCTION

1. Short title and scope of rules
2. Definitions

II. COMPOSITION AND FUNCTIONING OF GRAM SABHA

3. Composition of the Gram Sabha
4. Declaration of Village
5. Gram Panchayat to be the Executive Committee of Gram Sabha
6. Secretary, office, etc. of Gram Sabha
7. Gram Sabha meetings to be in public
8. Method of taking decisions
9. Date and time of meetings of Gram Sabha
10. Proceeding of the meetings of Gram Sabha
11. Presence in Gram Sabha
12. Special meetings of Gram Sabha
13. Standing Committees of Gram Sabha
14. Parallel bodies
15. Procedure of the Standing Committees of Gram Sabha
16. Complaint against Gram Sabha
17. Joint meetings of Gram Sabhas
18. Committee of Gram Panchayat to execute works in Gram Sabha

III. GRAM SABHA ACCOUNTS

19. Gram Sabha Kosh
20. Cash box
21. Accounts to be maintained
22. Gram Sabha wise accounts

IV. PEACE & SECURITY AND DISPUTE RESOLUTION

23. Role of Gram Sabha in maintaining peace and dispute resolution
24. Peace Committee
25. Peace and Security Corps
26. Matters relating to superstition, sorcery etc
27. Disputes to be heard by Gram Sabha
28. Justice Committee
29. Process of dispute resolution
30. Punishment by Gram Sabha
31. Role of police
32. Arrest and bail
33. Action by a person or persons not satisfied with the decision of the Gram Sabha regarding dispute resolution

V. MANAGEMENT OF NATURAL RESOURCES, AGRICULTURE AND LAND

34. Gram Sabha of safeguard Natural resources
35. Resource Planning and Management Committee
36. Gram Sabha to plan for farming
37. Land management
38. Prevention of land alienation
39. Restoration of alienated land
40. Consultation before land-acquisition
41. Planning and management of water resources
42. Management of irrigation
43. Management of land of ponds
44. Fishing etc.

VI. MINES AND MINERALS

45. Gram Sabha to plan for minor minerals
46. Use by individual villagers
47. Mining lease for minor minerals
48. Protection of environment
49. Grant of concession for exploitation of minor minerals by auction

VII. MANPOWER

50. Gram Sabha to plan for labour force
51. Workers taken outside the village
52. Accounting of birth, death etc.
53. Wages for work
54. Muster Roll to be submitted to Gram Sabha

VIII. INTOXICATION CONTROL

55. Regulation of intoxicants
56. Intoxication Control Committee
57. Instructions by Gram Sabha to manufactures of intoxicants
58. Opening a new factory or shop
59. Continuance of liquor shops
60. Views of women to be crucial

IX. MINOR FOREST PRODUCE

61. Consultation with Gram Sabha for departmental programmes of forests
62. Management of minor forest produce
63. Gram Sabha to decide price of minor forest produce and royalty
64. Official management of minor forest produce
65. Scheme for minor forests

X. MANAGEMENT OF MARKETS

66. Control over markets
67. Market Committee

XI. MONEY LENDING

68. Control over money lending transaction : scope and process
69. Review of agreements
70. Rescheduling of loan repayment
71. No attachment or auctioning of land without permission of Gram Sabha
72. Seeds and granary

XII. POWERS OF IDENTIFICATION OF BENEFICIARIES, APPROVAL OF PLANS SUPERVISION ETC.

73. Gram Sabha to identify beneficiaries
74. Approval of programmes by Gram Sabha
75. Compliance of decision of Gram Sabha by Government Departments and Gram Panchayat
76. Certification of expenses
77. Details regarding works to be given to Gram Sabha
78. Enquiries of Panchayat etc.

79. Review of Social Sector

80. State legislation to be in keeping with customary law, social, religious and traditional management practices of community

XIII. NOMINATION IN BLOCK AND DISTRICT PANCHAYATS

81. State Government to nominate Scheduled Tribe representatives in block and district Panchayats.

It is interesting to know that in its Chapter IV (PEACE & SECURITY AND DISPUTE RESOLUTION) the Draft Model Rules has endowed Grama Sabha with the power to hear and resolve and award punishment in respect of disputes occurring within the areas of Grama. The Gram Sabha or a Committee authorized by it will be competent to levy punishment in cases of non-serious crimes. As per the Draft Rules, those crimes shall be considered to be non-serious, which are other than the ones for which there is a provision of punishment of 2 or more years in the Indian Penal Code. In fact, the Annexure-1 to the Draft Model Rules contains a table of 36 non-serious offenses and the extent punishment against each as mentioned below, which are proposed to be brought within the ambit of judicial powers of Grama Sabha.

Offences under IPC triable by Gram Sabha under PESA Rules:

S. No.	Sections under IPC	Offences	Maximum Punishment
1.	160	Affray	Fine not extending Rs 100
2.	264	Fraudulent use of false instruments for weighting	Fine not exceeding Rs 500
3.	265	Fraudulent use of false weight or measure	Fine not exceeding Rs 500
4.	266	Being in possession of false weight or measure	Fine not exceeding Rs 200
5.	267	Making or selling false weight or measure	Fine not exceeding Rs 1000
6.	269	Negligent act likely to spread infection of disease dangerous to life	Fine not exceeding Rs 500.
7.	277	Fouling water of public spring or reservoir	Fine not extending Rs 500
8.	283	Danger or obstruction in public way or line of navigation	Fine not exceeding Rs200
9.	285	Negligent conduct with respect to fire or combustible matter	Fine not exceeding Rs 500
10.	286	Negligent conduct with respect to explosive substance	Fine not exceeding Rs 1000
11.	288	Negligent conduct with respect to pulling down or repairing buildings	Fine not exceeding Rs 500
12.	289	Negligent conduct with respect to animal	Fine not exceeding Rs. 500
13.	290	Public nuisance in cases not otherwise provided for	Fine not exceeding Rs. 200
14.	294	Obscene acts and songs	Fine not exceeding Rs 200

15.	298	Uttering words, etc., with deliberate intent to wound the religious feelings of any person	Fine not exceeding Rs 500
16.	323	Voluntarily causing hurt	Fine not exceeding Rs 1000
17.	334	Voluntarily causing hurt on provocation	Fine not exceeding Rs 500
18.	336	Act endangering life or personal safety of others	Fine not exceeding Rs 250
19.	341	Wrongful Restraint	Fine not exceeding Rs 500
20.	352	Assault or criminal force otherwise than on grave provocation	Fine not exceeding Rs 500
21.	374	Unlawful compulsory labour.	Fine not exceeding Rs 1000
22.	379*	Theft	Fine not exceeding Rs 1000
23.	403*	Dishonest misappropriation of property	Fine not exceeding Rs 500
24.	411*	Dishonestly receiving stolen property	Fine not exceeding Rs 500
25.	417*	Cheating	Fine not exceeding Rs 500
26.	426	Mischief	Fine not exceeding Rs 200
27.	427	Mischief causing damage to the amount of fifty rupees.	Fine not exceeding Rs 200
28.	428	Mischief by killing or maiming animal of the value of ten rupees.	Fine not exceeding Rs 100
29.	429	Mischief by killing or maiming a cattle etc. of any value or any animal of the value of Rs 50	Fine not exceeding Rs 500
30.	447	Criminal trespass	Fine not exceeding Rs 500
31.	448	House-trespass	Fine not exceeding Rs 1000
32.	500	Defamation	Fine not exceeding Rs 500
33.	504	Intentional insult with intent to provoke breach of the peace	Fine not exceeding Rs 200
34.	506	Criminal intimidation	Fine not exceeding Rs 1000
35.	509	Word, gesture or act intended to insult the modesty of a woman	Fine not exceeding Rs 1000
36.	510	Misconduct in public by a drunken person	Fine not exceeding Rs 10

***Provided that the amount of property does not exceed Rs 250.**

Under the circumstances, the concerned PESA states apart, the civil society groups across the country ought to debate the pros and cons of the above Draft Model Rules and simultaneously build pressure on the PESA states to deliberate on the same so as to formulate a calibrated response thereto and move forward in the direction of adapting it with necessary exceptions and modifications to their conditions. If the States respond positively by way of notifying the State Rules under PESA, it shall go a long way in grounding the provisions of PESA at grassroots level in an effective manner.