

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

FINAL 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 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.

1) Mandatory Powers of Gram Sabha

- a. Management of community resources
- b. Approve all plans/projects
- c. Identification of beneficiaries
- d. Issue certificate of utilization of funds
- e. Customary mode of dispute resolution

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

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

4) Mandatory Powers to Panchayat at appropriate level

- i. Planning and management of minor water bodies.

5) Powers to Gram Sabha and Panchayat at appropriate level

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

1.2 Adoption of PESA by the State of Madhya Pradesh:

State governments were required to amend their respective Panchayat Raj Acts within a year and not to make any law that would be inconsistent with the mandate of PESA. The M.P. Panchayat Raj Adhiniyam (Act), consolidated in the year 1994, establishes the Panchayats with a view to ensure effective involvement of the Panchayati Raj Institutions (PRIs) in local administration and developmental activities. The Government of M.P. has enacted the Panchayati Raj Dwitiya (Sansodhan) Adhiniyam 1997 (hereinafter amendment Act 43 of 1997) to conform to the Central Legislation of PESA. The Role of Gram Sabha in Scheduled Area needs to be looked into in the light of this and subsequent amendments along with Panchayati Raj (Sanshodhan) Adhiniyam

1999 and the M.P. Panchayati Raj (Sanshodhan) Adhiniyam 2001 wherein the words ‘Panchayati Raj’ was substituted by words ‘Panchayati Raj Avam Gram Swaraj’ in the Act.

However, the manner in which PESA provisions have been incorporated in MP Panchayati Raj Avam Gram Swaraj Adhiniyam (MPPRGSA), have been at variance with the letter and spirit of PESA. 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 the new Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, have been enacted, therefore, the PESA framework in Madhya Pradesh 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 Madhya Pradesh and our suggestions and recommendation on effective devolution of powers on each of the subject matters of PESA.

2. Adoption of PESA in Madhya Pradesh Panchayati Raj Act: Analysis of Issues and Corrective Action

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)):
 - a. Is there a clear understanding of *customary law* in scheduled areas? Have they been documented? If not, they need to be done as early as possible and clear provision to this effect need to be added in state Panchayat law.
 - 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 the PESA, the other is missing (although covered in FRA) Further, hunting is prohibited⁴ as per provisions of the Wildlife (Protection) Act, 1972 with certain exceptions⁵ that are provided within the act. A sample formulation is pasted below which can be used by State Panchayat law.
 - c. What are the traditional management practices of community resources? And what constitute community resources? A clear provision to document these in the Panchayat law. Further a clear definition (perhaps an inclusive definition of what includes community resource is required).
 - d. The changes that are required to be carried out in the Madhya Pradesh Panchayat Raj Avam Gram Sabha Adhiniyam, 1993 (hereinafter referred to as ‘MPPRGSA’) are as follows:

⁴ Section 9 Wildlife (Protection) Act, 1972

⁵ Section 11 Wildlife (Protection) Act, 1972

Section 129-C Powers and functions of Gram Sabha-In addition to the powers and functions contained in section 7, the Gram Sabha in scheduled areas shall also have the following powers and functions, namely:-

Insertion of Section 129-C (i-a) and (i-b) in MPPRGSA

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

(i-b) 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, 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 Madhya Pradesh has formulated the definition of village and the changes required as follows:

Section 129-A (b) MPPRGSA states: 'Village' means a village in the Scheduled Areas which 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 129-B Constitution of Village and Gram Sabha- (1) The Governor shall by public notification specifies a “Village” for the purposes of this Chapter.

Following Amendments in MPPRGSA are suggested:

Insert a new definition of village on the basis of above recommendation in

Section 129-A (b) MPPRGSA

“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”.

Add section 129-C: 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” ...

Let us examine how MPPRGSA has responded to this provision:

MPPRGSA: Gram Sabha in a Scheduled Area:-

‘Gram Sabha’ means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted”(section 129-A (a))

“Ordinarily, there shall be a Gram Sabha for a “Village” as defined in sub-section (1): Provided that if member of the Gram Sabha so desired, more than one Gram Sabha may be constituted in a village, in such manner as may be prescribed, and each such Gram Sabha may 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 traditions and customs” (Section 129-B (2))

(Section 129-B (2)) shall be rewritten as follows:

“Ordinarily, there shall be a Gram Sabha for a “village” as defined in sub-section (1) Provided that if member of the Gram Sabha so desire, more than one Gram Sabha may be constituted in a village, as described in Section and each such Gram Sabha may 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”.

Provided further that such Gram Sabha shall be recognized by the respective Gram Panchayat within which such Gram Sabhas exist.(Section 129-B (2))

The M.P. Land Revenue Code 1959 too shall be required to be amended to conduct an exercise of re-grouping of survey numbers of land to form a village as is mandated under PESA and MPPRGSA.

Insertion of section 68 (bb) MP Land Revenue Code 1959

(bb) grouping of the survey numbers in a notified village in a Scheduled Area would be as per section 129-A (b), 129-B (1) Madhya Pradesh Panchayat Raj Avam Gram Sabha Adhiniyam, 1993

Explanation- The word ‘Scheduled Area’ means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.

The MP Land Revenue Code 1959 has formulated Rules under section 68 regarding formation of survey numbers and villages.

Substitution of Rule 11 (2) under section 68 of the Code to read as follows:

“(2) No division shall be allowed resulting in the formation of a village with and an area of less than 200 acres except where the village is within a Scheduled Area.”

Explanation- the word ‘Scheduled Area’ means the scheduled areas, as referred to in clause (1) of Article 244 of the Constitution of India.

The notification under MPPRGSA constitutes a village as per section 129-A. 129-B for the purposes of the Panchayat act covers village existing over both revenue and forest land i.e. revenue and forest villages.

Constitution of Gram Sabha:

On the notification of a village in a scheduled area the ‘Gram Sabha’ for such a notified village would be constituted as per the **Madhya Pradesh Scheduled Areas Gram-Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998.**

Rule 4 lays down the procedure for constituting a Gram Sabha for the following area:

- (a) A village or group of villages;
- (b) A hamlet or group of hamlets which included mohalla, majra, tola or para etc.; and
- (c) Habitation or group of habitations.

Rule 4(2) provides for Gram Panchayat or Gram Sabha to pass a resolution of this effect that Gram Sabha is to be formed for the abovementioned areas or an application can be made to the ‘prescribed authority’. As per notification dated 23.02.1999 Collector of the concerned revenue district is the prescribed authority.

Insertion of a new rule 9(2) Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998.

“Every resolution including those for the annual working plan, selection of beneficiaries, annual budget, audit report and annual accounts and administrative report, shall be passed in the meeting which has the requisite quorum”

(Note that Rule 9(2) was omitted which allowed no quorum for the fresh meeting in case the quorum was not reached in the first⁶.)

⁶ The omitted version read as follows:

“(2) If at the time appointed for the meeting, the quorum is not present, the chairperson of the meeting shall adjourn the meeting to such future date and time as he may fix and fresh notice shall be given in the manner prescribed and no quorum shall be necessary for such adjourned meeting: Provided that no new subject shall be considered in such meeting.”

Another minor but important point that is relevant in case of many Gram Sabhas in Scheduled Areas is as follows:

For example, sec 7(3) of MPPRGSA vests the Gram Sabha with the power to enforce its recommendations through the Gram Panchayat. If there is more than one Gram Sabhas, whose recommendation would be enforced through the Gram Panchayat is not clear. This aspect needs further clarity from the state. Though there is section 90 MPPRGSA that provides for a mechanism for resolution of dispute between Panchayats and other local authorities. Further, the state government has formulated *The Madhya Pradesh Panchayat (Regulation of relations between Panchayats and Panchayat and Other Local authorities) Rules, 1994* under section 90 to provide for settlement of disputes. This provision could be used to provide a mechanism to resolve disputes between two or more Gram Sabhas within the Gram Panchayat.

Dispute between Gram Sabhas in Scheduled Areas:

Section 7(3) MPPRGSA Powers and functions and annual meeting of Gram Sabha-
The Gram Panchayat shall carry out the recommendations, if any, made by the Gram Sabha in regard to the matters before it under this section.

Insertion of (1-a) in section 90 (1) MPPRGSA

“(1-a) In event of any dispute arising between two or more Gram Sabha in Scheduled Area, the dispute would be resolved jointly by the Gram Sabha or 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.”

Insertion of (1-a) to Rule 13 (1) to The Madhya Pradesh Panchayat (Regulation of Relations between Panchayats and Panchayat and Other Local Authorities) Rules, 1994

“(i-a) two or more Gram Sabha within a Gram Panchayat in a Scheduled Area”

The Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business) Rules, 1998 mandates maintaining of an attendance register⁷ and one register to record the minutes⁸ the field experience shows that the signature in the attendance register are obtained even after the meeting of the Gram Sabha is over at the village market to show there was requisite quorum for passing of the resolutions. Though the minutes register records that the resolutions that have been passed, it does not require the signatures of the members of Gram Sabha and only requires the number of members present to be entered as per Form 3 appended to the rules. The rules need to be amended to mandate signature of the

⁷ Rule 13, The Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business) Rules, 1998

⁸ Rule 14, The Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business) Rules, 1998

members of Gram Sabha to be affixed in the minutes record after the passing of the Gram Sabha resolution to make it more participatory and legally appropriate.

Amendment to Rule 14 of The Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998

*14. minutes record (1) minutes, recording the proceedings and decisions of every meeting of Gram Sabha and the **signatures of** number of the members present thereat shall be entered by the secretary of the Gram Panchayat in the minutes book in Form-3 appended to these rules and shall be confirmed at the same meeting by the person presiding thereat.*

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 at least 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.
- The state government has enacted the Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996 and Madhya Pradesh Gram Nyayalaya Rules, 2009 setting up rural courts to dispense speedy justice at the Gram Panchayat level. The act has no provision for involvement of Gram Sabha in the dispute resolution mechanism. Further, the Gram Nyayalaya constituted under the act is for a circle comprising of ten⁹ or more Gram Panchayats. So dispute resolution is not at the village level but at the Panchayat level.

Issues that arise are as follows:

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.
3. Power of Gram Sabha/Gram Panchayat to set an agenda bringing in issues for discussion and resolution on customs and traditions and cultural identity.

The issue of the power of Gram Panchayat to set an agenda can be rectified by necessary amendments to the MPPRGSA. There are four mandated Gram Sabha in a year and the dates of the same are also known. The Gram Panchayat can formulate its own agenda and communicate the same to the District Collector and Zila Panchayat.

⁹ Section 3 Madhya Pradesh Gram Nyayalaya Adhiniyam, 1996

Insertion in Section 129-D (vii-a) Madhya Pradesh Panchayat Raj Avam Gram Sabha Adhiniyam, 1993

(vii-a) to set an agenda for the meeting of the Gram Sabha;

The MPPRGSA as per Section 129-C (i) 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:

Substitution of section 129-C (i) with

129-C (i) 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 and specially those documented as per provisions of section 129-C(i-a) in their respective jurisdiction and also ensure that they are in accordance with the basic principles of the Constitution.

Insert in Section 129-C (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 .

3. Powers Exclusive to Gram Sabha:

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

The Central PESA mandates three exclusive powers to the Gram Sabha: It states :” every Gram Sabha shall (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 at the village level”

In the General Powers of the Gram Sabha in section 7 applicable to both Scheduled and Non Scheduled Areas, following provisions have been made with regard to the above provision

“Subject to the Rules which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions:-

(a) to lay down the principles for identification of schemes and their priority for economic development of the village

(b) to approve all plans including Annual Plans, programs and projects for social and economic development before such plans, programs and projects are taken up for implementation by the Gram Panchayat.” [Section 7, MPPRGSA]

For strengthening the Gram Sabha in Scheduled Areas, this provision needs to be added in Chapter XIV-A, of the Act as:

Insert subsection in Section 129-C

- a. ***“Each Gram Sabha shall decide criteria for approval of every plans, programs and projects for social and economic development and implemented at the Panchayat level within which such Gram Sabha(s) exist. Provided that full and prior information on each such plan, program and project is provided by the project proponent to the Gram Sabha(s) in a language that is easily and commonly understood preferably in a vernacular language.***
- b. ***Every such plan, program and project shall be approved by such Gram Sabha(s) accordingly.”***

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))

MPPRGSA endows the Gram Sabha with the following power and function:

“Subject to the Rules, which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following functions, namely -

To Identify and select persons as beneficiaries under poverty alleviation and other programmes”
(Section 7(1) (f))

As seen from above, the decision of the Gram Sabha regarding identification and selection of beneficiaries been made subject to Rules or orders issued by the State Government. This is inconsistent with the spirit of PESA. Secondly, this function has been included among the general functions of the Gram Sabha applicable to both Scheduled and Non Scheduled Areas. It has not been included in the additional powers of the Gram Sabha in Scheduled Areas. In our view this should be added in the Additional Powers of Gram Sabha in Scheduled Areas as follows:

Insert (f-a) to section 7(1) (f) MPPRGSA

7(1) (f-a): The Gram Sabha shall also decide the criteria for identifying such beneficiaries which shall be duly recognized by the Panchayat within which such Gram Sabha exists.

3.3 Certification of utilisation of funds:

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

In MPPRGSA, with regard to certification of utilization the following provisions are mentioned:

Section 7(1) -Powers and Functions and Annual Meeting of Gram Sabha -

“Subject to the Rules, which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following functions, namely -

(e) to ascertain and certify the proper utilization by the Gram Panchayat of the funds for plans, programmes and projects referred to in clause (b)

Insertion of (e-i) after Section 7(1) (e) as follows:

7(e-i) to develop a format for granting utilisation certificate which shall be formally recognised as such by the respective Panchayat within which such Gram Sabha exists

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 ourself that the specifications on which the fund was sanctioned have been duly fulfilled / are being fulfilled and that we have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Certified that out of Rs. Of fund sanctioned during the year in favour of For 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 myself 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

(If the form as given above are accepted then the provision section 7(e-i) would be deleted.

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))*

In MPPRGSA the various tiers of Panchayats have been vested with several functions relating to minor water bodies. The fact that there is no definition of minor water body in the parent

legislation actually may be treated in a more creative way rather than taking the lack of definition as a negative aspect. But before that it's important to examine the provisions relating to water in the MPPRGSA.

MPPRGSA not only vests the power to plan and manage but also the ownership of minor water bodies (beyond PESA provisions) up to a specified water area to Gram Sabha, Janpad and Zila Panchayat. Section 129-C (iii) empowers Gram Sabha (in Scheduled Areas) to overall manage natural resources including land, water and forests within the area of the village in accordance with its tradition and in harmony with the provisions of the constitution. In addition to this, under section 7(1) (ss), Gram Sabha (in Non-Scheduled Areas) has also been given the power to plan, own and manage minor water bodies up to a specified water area situated within its territorial jurisdiction. It can lease out minor water bodies up to a specified water area for the purpose of fishing and other commercial purposes¹⁰ and also regulate the use of minor water bodies for irrigation purposes¹¹. All these functions as to regulation and use of minor water bodies are performed by the Gram Panchayat with the advice of the Gram Sabha¹². While in Scheduled Areas, such power to plan, own and manage minor water bodies up to a specified water area is conferred upon Janpad and Zila Panchayat under section 129-F(i). It is to be noted that for the proper implementation of such provisions and to avoid conflicts amongst the Gram Sabha, Janpad and Zila regarding jurisdiction over specified water area, the classification of the minor water bodies is indispensable.

To implement similar provisions, Government of Chhattisgarh (and Government of Rajasthan, also) has, through an enabling directive classified the minor water bodies according to their size and vested their ownership along with the power to plan and manage, in the Panchayat at the three levels.¹³ According to this notification, ponds upto 10 hectares are vested with the Gram Panchayat; between 11 to 99 hectares with the Janpad Panchayat; between 100 to 200 hectares with the Zila Panchayat and between 200 to 1000 hectares is with the Department of Fisheries. In the absence of such notification issued by Government of M.P., the present classification can be adopted with suitable modifications by the Government of M.P. as it leaves flexibility to alter the classification depending on situations. **(to be confirmed from State of M.P.)**

However, the lease rates may be fixed in consultation with the respective Panchayat at appropriate level to ascertain a fair price.

The relevant provisions of MPPRGSA are explained below:

Section 7: Power and function and Annual Meeting of Gram Sabha –

(1) Subject to rules, which the Government may make in the behalf, and subject to the general or special order, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely :-

¹⁰ Section 7(tt) of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993

¹¹ *Ibid.*, Section 7(uu)

¹² *Ibid.*, Section 7(j-iii)

¹³ Government Order No. F-11/2/36/2002/985/M/Raipur, Dated, 24.4.2003, Fisheries Department, Government of Chhattisgarh.

(j-ii) to 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;

(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;

(ss) to plan, own and manage minor water bodies upto a specified water area situated within its territorial jurisdiction;

(tt) to lease out minor water body upto a specified area for the purpose of fishing and commercial purpose;

(uu) To regulate the use of water of rivers, streams, minor water bodies for irrigation purposes;

The provision in MPPRGSA that is specifically applicable to Scheduled Areas:

Section 129-C Powers and Functions of Gram Sabha:

In addition to the powers and functions contained in Section 7, the Gram Sabha in Scheduled Areas shall also have the following powers and functions, namely,-

(iii) to manage natural resources including land, water, forests within the area of the village in accordance with its tradition and in harmony with the provisions of the constitution and other relevant laws for the time being in force;

Section 129-F Powers of Janpad and Zila Panchayat:

Without prejudice to the generality of powers conferred by this Act, the Janpad Panchayat or the Zila Panchayat, as the case may be, in Scheduled Areas shall also have the following powers, namely,-

(i) To plan, own and manage minor water bodies up to a specified water area;

4.2 Power to Impose Water Rate

MPPRGSA provides power to impose water rate to the Gram Panchayat where it is involved in supplying water.

Schedule II MPPRGSA

(Other Optional taxes fees etc. to be imposed by Gram Panchayats in consultation with Gram Sabha)

Entry 5: A water rate where arrangements are made by the Gram Panchayat for regular supply of water.

The Madhya Pradesh Sinchai Prabandhan Me Krishakon Ki Bhagidari Adhiniyam, 1999

The Act provides for farmers' participation in the management of irrigation system. Farmers Organisation has been formed such as Water Users' Associations¹⁴, Distributory Committees¹⁵

¹⁴ Section 3 of The Madhya Pradesh Sinchai Prabandhan Me Krishakon Ki Bhagidari Adhiniyam, 1999 (M.P. Act No. 23 of 1999)

and Project Committees¹⁶ mainly for the regulation and maintenance of the irrigation systems such as reservoirs, bore/tube wells, tanks and wells.

M.P. Irrigation Act, 1931 and M.P. Irrigation Rules, 1974

The Act provides for constitution of an Irrigation Panchayat for every village or Chak, and at the discretion of the Collector for a group of Villages in the commanded area of the canal. Such Panchayat shall comprise of a Sarpanch and two or more members elected by the permanent membership holders and occupiers of the land from among themselves¹⁷. It assists the officers of Irrigation Department in detecting and preventing encroachment on canal lands, prevent damage to irrigation works and report any willful damage caused to irrigation works¹⁸; assist the officers of the irrigation department in arranging for the construction of water courses, in recording and checking irrigation and in making measurements and settling disputes¹⁹; and, collect Irrigation cess or Canal Revenue and remit it to the treasury²⁰.

Insertion of explanation to section 7 (1) (ss) MPPRGSA

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

Insertion of section 129-F (v) MPPRGSA

129-F (v) The Panchayat at appropriate level shall collect water rate levied up to a specified water area, notified by the State Government from time to time situated within its territorial jurisdiction.

Provided the collection of water rate up to a specified water area by the Panchayat at appropriate level shall be done in consultation with Gram Sabha.

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:

¹⁵ *Ibid.*, Section 5

¹⁶ *Ibid.*, Section 7

¹⁷ Section 62(1) of The M.P. irrigation Act, 1931

¹⁸ *Ibid.*, Section 62(2)(b)

¹⁹ *Ibid.*, Section 62(2)(c)

²⁰ *Ibid.*, Section 62(2)(d)

- 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)**)*

It is important to examine how the state of Madhya Pradesh has allocated this power. Three legal issues emerge here.

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

In scheduled areas, the MPPRGSA does not provide for mandatory consultation of the Gram Sabha or Panchayat at Gram, Block or District level before acquisition of land for development projects or before resettling or rehabilitating persons affected by such projects.

However there are related sections in the MPPRGSA which deserve mention.

Section 113 Acquisition of land

- (1) Where any land is required for the purpose of this act and the Panchayat is unable to acquire it by agreement, the state government may at the request of the Panchayat and on the recommendation of the Collector proceed to acquire under the provisions of Land Acquisition Act, 1894 and on payment by the Panchayat of compensation awarded under that act, and all other charges incurred by the state government in connection with the proceedings, the land shall vest in the Panchayat on whose account it has been so acquired.
- (2) The Panchayat shall not without the previous sanction of the state government transfer any land which has been acquired under sub-section (1) or divert such land to a purpose other than the purpose for which it has been acquired.

As the above provisions highlights that MPPRGSA empowers Panchayats (in both scheduled and non scheduled areas) to acquire land for carrying out functions as prescribed under the act, in this case too, it does not provide for a prior consultation with the Gram Sabha.

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

Firstly, the term ‘**Consultation**’ needs to be defined on the lines of “Free, Prior and Informed Consent (FPIC) affirmed by international law and standards²¹”

²¹ 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.

Secondly, the MPPRGSA 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.

Insertion of section 129-C (viii-a) in MPPRGSA:

Insert Section 129-C (viii-a) -

“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 in such Scheduled Areas.

Provided that in case of acquisition in Scheduled Areas, the Collector shall convene an extraordinary meeting of the Gram Sabha as per section 6 of MPPRGSA, 1993 and Rule 6 Madhya Pradesh Scheduled Areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998 and carry out a consultation process with the Gram Sabha on the proposed acquisition.

Provided that Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of an Ideal Resettlement and Rehabilitation Policy of state of Madhya Pradesh, 2002 till the time a new legislation is passed”

Insert proviso to 129-C (viii-a)

“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 129-C (viii-a)

“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 Madhya Pradesh to make it consistent with PESA and MPPRGSA.

Land Acquisition Act, 1894 as applicable in Madhya Pradesh:

Insert proviso in section 4 (explanation) – *“provided that in Scheduled Areas, the smallest revenue administrative unit is a ‘village’ as defined in PESA.”*

Insert proviso to Section 5-A -, *“provided that in case of acquisition in Scheduled Areas, the Collector shall convene an extra-ordinary meeting of the Gram Sabha as per section 6 of*

MPPRGSA, 1993 and Rule 6 Madhya Pradesh Scheduled areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business) Rules, 1998, and carry out a consultation process with the Gram Sabha on the proposed acquisition.

As an alternative to the amendments to Land Acquisition Act, the above provisions are being included in the MPPRGSA.

Fourthly, since, as of now, the State legislation on resettlement and rehabilitation, for example, M.P. Resettlement & Rehabilitation of Displaced persons (Land Acquisition) Act, 1949²² and M.P. Resettlement of Displaced Land Holder (Land Acquisition) Act, 1954²³ and the Rules of 1961²⁴ does not provide specific provisions for acquisition of land in the Scheduled Areas therefore, to implement the provisions of PESA, proposed LA and the resettlement and rehabilitation Bill needs to be considered and till that is passed the NPRR, 2007 needs to be adhered to.

Insert Section 5-B – “Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of An Ideal Rehabilitation Policy of state of Madhya Pradesh, 2002 till the time a new legislation is passed”

5.2 Prior recommendation in granting prospecting license or mining lease 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 prospecting license or mining lease for minor minerals in the Scheduled Areas;**” (Section 4(k))*

*Central PESA also states that: “the **prior recommendations** 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))*

There are no such provisions under MPPRGSA, 1993 regarding minor minerals. Also, minor minerals have not been defined either.

Section 7(1)(j-ii) of MPPRGSA provides for a generic provision as follows: *Gram Sabha “to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution other relevant laws in force for the time being in force.”*

As stated earlier, in MPPRGSA, there is no specific provision regarding taking mandatory recommendations of the Gram Sabha or the Panchayat at appropriate level prior to the grant of prospecting licence or mining lease for minor minerals or for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. However, the Act gives the

²² M.P. Act No. 20 of 1949

²³ M.P. Act No. 22 of 1954

²⁴ *Vide* Notification No. 4199-VII-N-I, dated 15-9-1961. Published in M.P. Rajpatra, Part IV at p.796

power to the Gram Sabha to manage its land resources among others. This would per se include minerals including minor minerals.²⁵

The Government of Madhya Pradesh has framed Madhya Pradesh Minor Mineral Rules, 1996 (hereinafter Rules) for the regulation of matters such as grant and renewal of quarry lease and quarry permit for minor minerals, restrictions on undertaking mining operations, period of lease, assessment of royalty and disbursement of revenue from quarrying of minor minerals between Janpad Panchayat and Gram Panchayat. Some of the relevant rules are given below for ready reference.

Some of the related provisions are mentioned below.

Rule 3 Exemptions- *Nothing in these rules shall apply to,-*

- (i) *the extraction of clay or sand, by a hereditary kumhar, a member of a Scheduled Caste or a member of a Scheduled Tribe or a Cooperative Society of such kumhars or members of Scheduled Castes or members of Scheduled Tribes for preparing tiles, pots or bricks by traditional means, but not by the process of manufacture in kilns or by any mechanical means, from the area that the Gram Sabha may decide and earmark within their respective jurisdiction for such purpose :*

Provided that no quarrying shall be done within a distance of 100 metres from a bridge, national/state highway, railway line, public place, river bank, nalas, canal, reservoir, dam, any natural water course or any water impounding structure, 10 metres from grameen Kacha rasta.

Rule 7: Power to grant trade quarry

- (1) *The quarries of Minerals specified in serial number 1, 3 and 4 of Schedule II shall be allotted only by auction.*
- (2) *The quarries mentioned in sub-rule (1) shall be auctioned for two years.*
- (3) *The auction of quarries mentioned in sub-rule (1) shall be conducted in a transparent manner by the Collector / Additional Collector (Senior IAS Scale)*
- (4) *The power to sanction and control the quarries mentioned in sub-rule (1) shall vest with the Collector / Additional Collector (Senior IAS Scale)*

Provided that where the bid in an auction is less than the upset price filed by the government, the collector/ Additional Collector, shall submit a proposal to the government. The decision of the Government thereon shall be final and binding on the bidder.

Rule 8- Procedure for demarcation and declaration of new quarries.-

The new quarries in respect of minerals specified in serial number 1, 3 and 4 of Schedule II, shall be demarcated and declared by the Collector in consultation with concerning Panchayats/ Corporations/Municipality/Special Areas or Nagar Panchayats, as the case may be:

Provided that if consultation is not received within a period of 30 days by the concerning bodies, the Collector shall be at the liberty to demarcate and declare new quarries in respect of minerals specified above after making such enquiries, as he may deem fit in Non Scheduled Areas after the aforesaid period.

²⁵ Land as defined in Land Acquisition Act, 1894

Rule 18: Disposal of applications for the grant or renewal of quarry lease-

- (1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Sabhat concerned of the district and collectorate of the district concerned.
- (2) The Sanctioning Authority after making such enquiries as he deems fit, may sanction the grant or renewal of a quarry lease or refuse to sanction it within one year from the date of receipt of the application for the grant of quarry lease or for the renewal application before the expiry of quarry lease already sanctioned. Otherwise the application shall be deemed to have been refused:

Provided that no quarry lease for new area shall be sanctioned without obtaining opinion of the respective Gram Sabha

- (3) Notwithstanding anything contained in sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh applications in this behalf may be made according to the procedure laid down under these rules.
- (4) Where an applicant for grant or renewal of a quarry lease, dies before the sanction order is passed it will be deemed to have been filed by his heir and if the applicant dies after the sanction order of grant or renewal but before execution of lease deed it will be deemed to have been granted or renewed to the legal heir of the applicant.
- (5) Mineral concessions to Minerals specified at Sr. No. 1, 2 and 3 of Schedule I may be granted as per the provisions of Granite Conservation and Development Rules, 1999 and Marble Conservation and Development Rules, 2002.

Rule 30- Conditions of quarry lease-

(1) Every quarry lease shall be subject to the following conditions:-

(a) The lessee shall pay, for every year, yearly dead rent at the rates specified in the Schedule IV in the advance for the whole year, on or before the 20th day of the first month of the year;

Rule 36 Auction of quarries-

- (1) The quarries of minerals specified in Sr. No. 1, 3 and 4 of Schedule II shall be allotted only by auction.
- (2) Notice of auction shall be published in Form XV atleast 15 days before the auction at the notice board or any conspicuous place by way of fixing the copy of such notice thereon in the office of the concerned Gram Panchayat, Janpad Panchayat, Zila Panchayat, Development Block, Tahsil and collectorate and the Village where the quarries are situated.
- (3) Every bidder shall execute an agreement in Form XVI before he/she participates in the auction.

Rule 37 Execution and Registration of Contract Agreement-

- (1) The Contract agreement in Form XVIII together with surety bond in Form XVII shall be executed by the successful bidder within a period of 30 days from the date of receipt of approval of the contract:

Provided that where the State Government or the Collector/Additional Collector (Senior IAs Scale) or any Officer authorised by the State Government in this behalf is satisfied that the successful bidder is not responsible for the delay in the execution of the agreement, the Government or the Collector/ Additional Collector (Senior IAS Scale) or any Officer authorised by the State Government as the case may be, may permit the execution of the formal agreement after expiry of the aforesaid period.

(2) The Contract agreement in Form XVIII relating to the auction of trade quarry shall be registered in accordance with the provisions of the Indian Registration Act, 1908.

Rule 38 Rates of royalty- *The rates of royalty payable on minerals dispatched from the auctioned quarry shall be as given in Schedule III of these rules.*

Rule 53: Penalty for un-authorized extraction and transportation

(1) Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(2) Whenever any person is found extracting or transporting mineral in contravention of the provisions of these rules the Collector/Additional Collector/Joint Director/Deputy Director/Mining Officer/Assistant Mining Officer, or any Officer authorised by him or Zila/Janpad/Gram Sabha may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence.

(3) The officer seizing illegally extracted or transported mineral or its product, tools, equipments and vehicles shall give a receipt of the same to the person from whose possession such things were so seized and shall make report to the Magistrate having Jurisdiction to try such offence.

(4) The property so seized under sub-rule (2) may be released by the officer who seized such property on execution of a bond to the satisfaction of the officer by the persons from whose possession such property was seized. It shall be produced at the time and at the place when such production is asked for by such officer:

Provided that where a report has been made to the Magistrate under sub-rule (3) then the seized property shall be released only under the orders of such Magistrate.

Rule 56 Deposition of Revenue-

(1) All revenue including dead rent, royalty, surface rent, interest and any other penalties for the quarries of minor minerals shall be deposited under the revenue receipt head prescribed in sub-rule (3) of Rule 10.

Rule 68 Permission for removal of minor minerals for Central and State Government and their undertakings-

(1) (i) The concerning Collector/Additional Collector shall grant permission for extraction, removal and transportation of any minor mineral from any specified quarry or land which may be required for the works of any department and undertaking of the Central Government

- or State Government. Such permission shall only be granted to either the concerned departmental authority or its authorised contractor on furnishing proof of award of contract.*
- (2) Such permission shall not exceed the quantity of minerals required for construction work and the period shall not exceed the period of construction work.*
 - (3) Such permission shall only be granted on payment in advance of royalty calculated at the rates specified in schedule III. The transit pass in Form IX then shall be issued.*
 - (4) The permit shall be governed by the following conditions:*
 - (a) The permit holder shall maintain complete and correct account of the mineral removed and transported from the area.*
 - (b) The permit holder shall allow any officer authorised by the Zila/Janpad/Gram Panchayat in respect of the permission given by the Collector/Deputy Director/Mining Officer/Assistant Mining Officer/ Mining Inspector, to inspect ct quarrying operation and verify the accounts.*
 - (c) No sooner the permitted quantity is transported within the time period of construction work or earlier, duplicates of all transit pass, such unused transit passes together with a complete statement of the quantities duly certified by the Officer of the concerned department shall be furnished to the Sanctioning authority.*

To correct the aforementioned anomalies following recommendations are made:

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

- (i) Recommendations of Gram Sabha or Panchayat at appropriate level (hereinafter referred to as 'PAL') before grant of prospecting licence for minor mineral
- (ii) Recommendations of Gram Sabha or PAL before grant of mining lease for minor minerals.
- (iii) Recommendations of Gram Sabha or PAL before grant of concession for the exploitation of minor minerals by auction.

As mentioned before, PESA only makes recommendations of the Gram Sabha or the PAL mandatory, prior to the grant of prospecting licence or mining lease for minor minerals or for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. However, in law, recommendation is in the nature of opinion or view and is not binding on the party. Therefore, in order to protect the interest and resources of the Gram Sabha, recommendation may be replaced with "**Free and Prior Informed Consent**"

Besides, the power of free and prior informed consent in case of grant of mining leases shall be given to Gram Sabha and the provision is included in the section on Additional powers of the Gram Sabha in Scheduled Areas.

Thirdly, appropriate amendments may be made in Madhya Pradesh Minor Minerals Rules, 1996 as per the provisions of PESA and MPPRGSA as follows:

Suggested Amendments:

Insertion of Section 129 C (vi-a) MPPRGSA, 1993

“(vi-a) to grant prior approval before grant or renewal of prospecting license, quarry lease, quarry permit for minerals specified in Schedule I and Schedule II of the Madhya Pradesh Minor Mineral Rules, 1996”

Madhya Pradesh Minor Mineral Rules, 1996

Insertion of Rule 2 (xxii-b) in Madhya Pradesh Minor Mineral Rules, 1996

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

Insertion of Rule 2 (xxiii-a)

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

Amendment to Rule 4 Madhya Pradesh Minor Mineral Rules, 1996

*Rule 4: Prohibition of mining operation without a trade quarry or quarry lease, **prospecting operation without a prospecting license***

*(1) No person shall undertake any mining operation **or prospecting operation** in any area except under and in accordance with the terms and conditions of a trade quarry or quarry lease **or ‘prospecting license’** granted under these Rules:*

Provided that nothing in this sub-rule shall affect any mining or quarrying operation undertaken in any area in accordance with the terms and conditions of permit, a quarry lease, trade quarry or royalty quarry granted before the commencement of these rules which is in force at the time of such commencement.

*(2) No trade quarry or quarry lease **or ‘prospecting license’** shall be granted other than in accordance with provisions of these Rules.*

Insertion of a proviso to Rule 6 – Power to grant quarry lease

“Provided that quarry lease shall be granted or renewed by the respective Panchayat, after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated.”

Insertion of (sub-rule 2) to Rule 9- Application for Quarry lease

“Every application for the grant or renewal of a quarry lease shall be accompanied by a certificate of ‘prior approval’ to be obtained from the Gram Sabha of the Panchayat in which the quarry area is situated”

Insertion of sub rule (4) & (5) to Rule 56

(4) A percentage of the revenue collected from the minor mineral quarries granted by state government including dead rent, royalty, surface rent, interest and any other penalty shall be deposited in the fund of Gram Sabha within whose jurisdiction the area pertaining to the quarry lease is located.

(5) The State Government shall, by notification, determine the percentage of the revenue to be deposited in the fund of the Gram Sabha.

Insertion of Chapter II-A: Powers to Grant Prospecting License

(Rule 5-A) Power to grant prospecting license- Prospecting License in respect of minerals specified in Schedule-I and Schedule-II shall be granted and renewed by the competent authority, provided that prior approval of the Gram Sabha of the Panchayat is obtained within whose jurisdiction the area pertaining to the prospecting license is located.

Explanation: - For the purpose of obtaining prior approval of the Gram Sabha the procedure prescribed in Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 may be followed.

Insertion of Chapter III-A: Application for prospecting License

“(Rule 8-i) Application for prospecting license

An application for grant or renewal of prospecting license shall be made in Form I of Rule 9 in triplicate for the minerals specified in Schedule I and Schedule II. The procedure specified for grant of quarry lease in Chapter IV Rule 9,10,11,13,14,15,17,18,19,20,21 would be followed mutatis mutandis for grant of license for prospecting of minerals specified in Schedule I and Schedule II. The State Government may by notification do away with certain conditions as prescribed in Chapter-IV in its application to prospecting license.

(Rule 8-ii) Minimum Area for grant of Concession of prospecting license

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.

(Rule 8-iii) Period of grant and extension of prospecting license

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 licensee in respect of such part of the area or as may be specified.”

6. Powers to Gram Sabha and Panchayat at Appropriate Level

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

The Central PESA mandates that “*While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with, among others, the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant*” (**Section 4m (i)**)

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993

The MPPRGSA does not contain this provision in any manner. However there are general provisions of MPPRGSA.

Insertion of Section 129C (vi-b) MPPRGSA

To enforce prohibition on sale and consumption of intoxicant
Explanation – for the purpose of this section “intoxicant” would have the same meaning as provided in the respective state excise law or any other dealing with this subject matter with all its cognate and grammatical variations.

Insertion of Section 129C (vi-c) MPPRGSA

To regulate or restrict the sale and consumption of any intoxicant

The non-inclusion of powers as required under PESA to some extent is redressed in the subject matter law i.e. the law on Excise in Madhya Pradesh

Madhya Pradesh Excise Act, 1915

Madhya Pradesh Excise Act, 1915 has been amended vide Madhya Pradesh 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-à-vis the same.

The Madhya Pradesh Excise Act, 1915 defines “**Intoxicants**” to mean any liquor or intoxicating drug. The Act further explains the words “**Liquor**” as meaning intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.

Further “**intoxicating drug**” means – (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa*), including all forms known as “Bhang”, “sindhi” or “ganja”; (ii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the State Government may, by notification, declare to be an intoxicating drug

not being narcotic drug as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (No. 61 of 1985)

What is clear from the above is that the terms intoxicants covers within itself a variety of substances and processes and the law has defined the ambit of both the substance as well as the processes. Note that PESA merely mentions the word ‘intoxicant’ without defining it and then quickly moves to its control and prohibition, etc.

Amendment to Section 61-E, Madhya Pradesh Excise Act, 1915

Power of Gram Sabha to regulate and prohibit manufacture, sale, etc. of intoxicants

(1) The Gram Sabha along with the Panchayat at appropriate level shall have the power to regulate and prohibit manufacture, possession, transport, sale and consumption of intoxicants within its territorial jurisdiction:

Provided that an order of prohibition passed by the Gram Sabha shall not apply to a manufactory engaged in the manufacture of any intoxicant and established prior to coming into force of the provision of this chapter.

(2) No new manufactory for manufacture of any intoxicants shall be established and no new outlets for sale of intoxicants in any area comprised within the territorial jurisdiction of the Gram Sabha and its respective panchayat at the village, block and district level shall be opened by state government without the consent of the Gram Sabha and permission from the respective Panchayat at appropriate level.

(3) If a gram sabha prohibits manufacture, possession, sale and consumption of any intoxicants in its area, the following consequences shall follow:

(a) no new manufactory of intoxicants shall be established within the jurisdiction of the gram sabha

(b) no new outlets for sale of any intoxicants shall be opened, and the existing outlets, if any, shall be closed with effect from the first day of the next financial year immediately following the issue of order of prohibition

(c) No person shall manufacture, possess, transport, sell or consume any intoxicant within the Gram Sabha area.

Insertion of section 61-G, Madhya Pradesh Excise Act, 1915

Deposition of Revenue – 50% of the revenue generated from excise cable article and any other penalty shall be deposited in the fund of the Gram Sabha at the end of each financial year.

What is not clear from the above is the role of the Panchayat at appropriate level which is also to be integrated in the power structure. One suggestion is the concurrence of the Panchayat at the appropriate level before any manufacture, possession, transport, sale and consumption of intoxicants is carried out within its territorial jurisdiction. The same has been added as highlights in the above suggestions.

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))

Besides ownership of MFP, other aspects such as access and use are also equally important.

MPPRGSA postulates that, subject to rules and orders that the state government might frame, the Gram Sabha has the power to manage natural resources including forests within the area of the village. However, the MPPRGSA is silent on the issue of ownership of MFP and devolution of the right of ownership to Gram Sabha. Instead, MP government has only defined MFP as "non timber forest produce which can be harvested on a non-destructive basis and will not include minerals and wild animals or their derivatives".²⁶ The only interpretation on the reading of the provision is that the Gram Sabha has been endowed with the power to manage forest resource among others which may include MFP. This has further been qualified where it has been made subject to other "relevant laws" for the time being in force.²⁷

MFP/NTFP has been classified into two categories namely nationalised (referred to as "Specified forest produce"²⁸ by M.P. State) and non-nationalised. Nationalised MFP is that certain forest produce where the state monopoly has been created for purchase and trade in the public interest. Nationalised MFP includes forest produce such as Tendu leaves, Sal Seed, Harra, Gums of Kullu, Dhawda, Khair and Babool. The purchase and trade of Tendu leaves was nationalised by *Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam-1964*. The purchase and trade of Sal Seed²⁹, Harra³⁰, Gums of Kullu, Dhawda, Khair and Babool³¹ known as 'specified forest produce' were nationalised by *Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969*. The other MFP are non-nationalised items and can be collected and traded freely. This act only defines 'specified forest produce' in the context of the Act. The Act provides for appointment³² of an 'agent' for carrying out functions of purchase and trade of 'specified forest produce' (Nationalised MFP) on behalf of the state government. The state government can appoint a co-operative society, Gram Panchayat or a Janpad Panchayat as an agent for carrying out the functions relating to trade of nationalised MFP³³. In order to give benefits to forest dependent communities in collection and trade of forest produce, the Madhya Pradesh State Minor Forest Produce (Trading & Development) Co-operative Federation Limited, Bhopal

²⁶ M.P. Government Circular dated 15/05/1998

²⁷ Section 129-C, MPPRGSA

²⁸ Section 2 (1) of The M.P. Van upaj (Vyapar Viniyaman) Adhiniyam, 1969: "specified forest produce" in relation to a specified area means the forest produce specified in notification under sub-section (3) of Section 1 for such specified area.

²⁹ Inserted by M.P. Act No. 7 of 1975 (w.e.f. 5-5-1975)

³⁰ Section 1(3) M.P. Van Upaj (Vyapar Viniyam) Adhiniyam, 1969: It shall come into force,- (i) at once in such areas and in respect of such forest produce as have been specified by notification issued under sub-section(3) of Section 1 of the Mp.P. Van upaj (Vyapar Viniyaman) Adhyadesh, 1969 , repealed under section 23; and (ii) in such other area or areas and in relation to such other forest produce and on such date or dates as the State government may, by notification, specify in this behalf.

³¹ *Ibid*

³² *Ibid*, Section 4(1).

³³ *Ibid*, Section 4(2)- subs. by M.P. Act No. 28 of 1983 (w.e.f. 15-9-1983)

(herein after referred to as 'Federation') was formed in 1984³⁴. The Federation has been appointed as an agent of the state government to carry out the trade in nationalised MFP. This Federation co-ordinates collection, processing and trading of Tendu leaves, Sal Seed, & Kullu Gum through Primary Forest Produce Co-operative Societies in the districts of the State which are forest produce areas and organises disposal of these produce. In addition, other non-nationalized NWFP are also being collected and traded by the Primary Forest Produce Co-operative Societies. In 1988, Madhya Pradesh government decided to totally eliminate the middlemen in collection, storage and trade of MFP, and authorised the formation of Co-operative Societies of the actual collectors. It comprises a three tier cooperative structure constituting a state level Apex body, 32 Forest Produce Co-Operative District Unions and 913 Primary Forest Produce Co-operative Societies. The Federation is responsible for all aspects relating to management, development and trade of nationalised and non-nationalised minor forest produce in the state. The collection of MFP is done by the primary cooperative societies which comprise of actual collectors of MFP who are usually tribals and they are responsible for collection at collection centre level. The MFP that is collected and purchased is transported or stored by Forest produce co-operative district unions at the Forest Division level. The Divisional Forest Officer (DFO) is the ex-officio Managing Director, District Union. S/He ensures the collection of produce, storage and payment of collection wages to the collectors through primary co-operative societies. The trading of MFP is done by the Federation through tenders and auctions. After the entire expenses are met, 20% of the revenue generated is invested in the development of MFP and Afforestation activity under the supervision of the forest department, 60% of the amount is distributed as incentives to the primary collectors and the balance for infrastructural development.³⁵ The purchasing price of the specified forest produce is to be determined by the State Government in such a manner as may be prescribed.

Transportation of MFP is governed by M.P. Van Upaj Other Than Timber (Vyapar Viniyaman) Niyam³⁶, Madhya Pradesh Transit Policy (to be confirmed with the State) and the Madhya Pradesh Transit (Forest Produce) Rules, 2000³⁷. Rule 3 of the Rules of 2000 provides for regulation of transit of forest produce by means of passes. The rules exempt the requirement of transit permit/pass for transportation of MFP³⁸ from the forests to the local market or to the collection centre or for *bonafide* domestic consumption. Also, the State government has exempted all the unspecified minor forest produce except Timber, Mineral, Wildlife Produce, Tendu Patta, Sal Seeds and kullu gum from the operation of the said rules through an amending notification³⁹.

Following the suggested modifications in the concerned Acts and rules:

³⁴ http://mfpfederation.org/website/content/about_us.html (to demand details of notification for its constitution)

³⁵ *Ibid*

³⁶ *Vide* Notification No. 7314-53-X-(3)-69, dated 1-11-1969; published in M.P. Rajpatra (Asadharan), dated 1-11-1969 at pp. 2382-2410

³⁷ *Vide* Notification No. F-30-40-95-X-3, dated 13-12-2000, published in M.P. Rajpatra Part IV (Ga), dated 22-12-2000

³⁸ Proviso (d) to Rule 3 of M.P. Transit (Forest Produce) Rules, 2000

³⁹ *Vide* Notification No. F-28-I-2003-X-3, dates 24-6-2003, published in M.P. Rajpatra Part I, dated 4-7-2003 at p. 1462

Insertion of Section 129-C (vi-d) MPPRGSA: Power and function of Gram Sabha

129-C (vi-d): To own and have right of access to collect, use and dispose minor forest produce within and outside the village boundaries where they have had traditional access.

Explanation – for the purposes of this section, "Minor Forest Produce" includes all non-timber forest produce 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 except the inclusion of bamboo.

Insertion of Section 129-D (vii-a) MPPRGSA: Functions of Gram Panchayat

129-D (vii-a) to facilitate the integrated management and supervision of collection, storage, processing, marketing, value addition of minor forest produce through the Gram Sabha

Provided 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.

Insertion of Section (1-A) Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969

(1-A) the act would exclude from its operation Scheduled Areas of the state

Explanation- The word 'Scheduled Area' means the Scheduled Area, as referred to in clause (1) of Article 244 of the Constitution of India.

Insertion of Section (1-A) Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964

(1-A) the act would exclude from its operation Scheduled Areas of the state

Explanation- The word 'Scheduled Area' means the Scheduled Area, as referred to in clause (1) of Article 244 of the Constitution of India.

Insertion to Rule 3 proviso (d), Madhya Pradesh Transit (Forest Produce) Rules, 2000

(d) Of minor forest produce from 'forest land' to the local market or to the collection centre or for bonafide domestic consumption.

Explanation – The term 'forest land' in this section means land of any description falling within any forest area and includes unclassified forests, undemarcated forest, existing or deemed forest, protect forest, reserved forest, sanctuaries and National Park.

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

The Central PESA mandates “*While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;*” (Section 4 (m-iii))

The MPPRGSA has not made any special provision regarding the same. The only enabling provision is in the Madhya Pradesh land revenue Code, 1959.

Section 170-B (2-A) Madhya Pradesh Land Revenue Code 1959

(2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs:

Provided that the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

Insertion of section 129-C (vii) MPPRGSA

<p><i>129-C(vii)- To have the authority to prevent any unlawful alienation of land as well restore unlawfully alienated lands belonging to the Scheduled tribe in a Scheduled area as well as any land within a Scheduled area to that person to whom it originally belonged and if that person is dead to his legal heirs.</i></p>

6.4 Control over Institutions and Functionaries in all Social Sectors

Regarding Institutions and functionaries in all social sectors, the Central PESA provides “*While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to exercise control over institutions and functionaries in all social sectors;*” (Section 4(m-vi))

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

Some of the indicative social sectors are as follows:

1. Employment
2. Education

3. Health
4. Rural water supply and sanitation
5. Women and child development

The MPPRGSA in their various provisions relating to institutions of social sector has provided as follows:

Section 7 (1) (j-i): Powers and function and annual meeting of Gram Sabha

(1) Subject to the rules, which the State Government may make in this behalf, and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely:-

To exercise control over institutions and functionaries in social sectors transferred to or appointed by gram Panchayat through that Panchayat;

Section 52 (1) (xii) Functions of Zila Panchayat

(1) Subject to the provisions of this Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of Zila Panchayat to,-

(xii) Administer and control the employees appointed and posted in Panchayats including staff transferred by the State Government to the Panchayats;

Explanation- The administration and control of the staff transferred by the State Government shall include the exercise of such power as may be defined by the state government from time to time by special or general order;

Section 129-F: Powers of Janpad and Zila Panchayat

(ii) To exercise control over institutions and functionaries in social sectors transferred to them

There is a need to have clarity on the powers and part of social sector where the PAL is able to exercise power.

Insertion of section 129-F (iii-a) to (iii-e) MPPRGSA

129-F (iii-a) “To call for the administrative reports of all the aided educational institutions through the respective Gram Panchayat.”

129-F (iii-b) “To monitor national health programmes, review the supply of medicines to primary health centers and government hospitals, monitor the health extension in rural areas”

129-F (iii-c) “To call for the administrative reports of all the primary health centers for each financial year through the respective Gram Panchayat”

129-F (iii-d) “To call for the administrative reports of all anganwadi workers for each financial year through the respective Gram Panchayat”

129-F (iii-e) “To 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))*

The power to manage has concomitant power of regulation, an establishment which has not been provided in PESA and it is imperative to include these powers for effective management of village markets by Gram Sabha and PAL.

Amendment of section 4 (m) (iv) Central PESA

The power to establish, regulate, manage village markets by whatever name called;

Under the MPPRGSA: There are various provisions that relate to market and fairs as follows:

Section 49: Functions of Gram Panchayat

It shall be the duty of a Gram Panchayat in so far as the Gram Panchayat funds allows to perform within its areas the following functions:-

(18) Establishment, management and regulation of markets and melas other than public markets and public melas;

Section 50: Functions of Janpad Panchayat

(1) Subject to the provisions of this act and rules made thereunder, and subject to general and special orders, as may be issued by the state government, from time to time, it shall be the duty of a Janpad Panchayat so far as the Janpad Panchayat funds allows to make reasonable provisions in the Block for the following matters,-

(e) management of public markets, public melas and exhibitions; and

Section 58: Regulation of markets and melas

(1) Save as provided in the Madhya Pradesh Krishi Upaj mandi Adhiniyam, 1972 (No. 24 of 1973), no person except Gram Panchayat shall within the Gram Panchayat area set up, establish or use any place for the purpose of a market or a mela:

Provided that the State Government, may by notification, declare any market or mela to be public market or public mela and the public market or public mela, as the case maybe, so declared shall vest in the Janpad Panchayat

(2) *The State Government may make rules to regulate the market or the mela specified in sub-section (1)*

Regulation of Markets and Melas within the Gram Panchayat Areas Rules, 1994

The rules formulated under section 58 is to lay down procedure and process to be followed by the Gram Panchayat to establish and manage markets within the Gram Panchayat area for the convenience of the people of the area.

Section 80: Lease of market fee etc

The Panchayat may by public auction in the prescribed manner, lease the collection of any fee specified in schedule III

Gram Panchayat and Janpad Panchayat (Lease of Collection of fees) Rules, 1995

The collection of fees specified in schedule III of MPPRGSA can be leased out as per section 80 MPPRGSA, the rules formulated under the section lay down the procedure for conducting auction for collection of fees. The entries in the schedule refer to imposition of fees on persons who put out their goods for sale in any market under the control of the Gram Panchayat.

Section 129-C: powers and functions of Gram Sabha

In addition to the powers and functions contained in section 7, the Gram Sabha in Scheduled Areas shall also have the following powers and functions namely:-

(v) To manage village markets and melas including cattle fairs, by whatever name called, through the Gram Panchayat

Section 129-D: Functions of Gram Panchayat

(ii) to manage village markets and melas including cattle fairs, by whatever name called;

Schedule I

Obligatory taxes to be imposed by Gram Panchayats in consultation with the Gram Sabha

5. Market fees on persons exposing goods for sale in any market or at any place or any building or structure therein belonging to or under the control of the Gram Panchayat

6. A fees on the registration of cattle sold in any market or in any place belonging to or under the control of the Gram Panchayat.

The following two are suggested in a modified form:

Schedule II

B. Other Optional Taxes to be imposed by Janpad Panchayat

Fees for any license or permission granted by the Janpad Panchayat under the Act or for use and occupation of lands or other properties vested in or maintained by the Janpad Panchayat and in consultation with the Gram Sabha.

Schedule II-A

Other optional taxes, fees etc. to be imposed by Gram Panchayat in consultation with the Gram Sabha

9. Fees for temporary structure or any projection over any public place of temporary occupation thereof.

Schedule III

Lease of collection of fees by Gram Panchayat in consultation with the Gram Sabha

1. A fees on persons exposing goods for sale in any market or any place belonging to or under the control of Gram Panchayat ***in consultation with the Gram Sabha*** or for the use of any building or structure therein.

2. A fees on registration of cattle sold in any market or place belonging to it under the control of the Gram Panchayat ***in consultation with the Gram Sabha***.

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973)

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 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.⁴⁰This 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 Panchayat to set up markets or *melas* in the Panchayat area as per section 58 of MPPRGSA. The provisions of this Act are in conflict with the spirit of PESA which vests unfettered powers in the Gram Sabha and PAL to manage village markets.

⁴⁰ **Section 3: Notification of intention of regulating marketing of notified agricultural produce in specified area.** (1) Upon a representation made by local authority or by the growers of any agricultural produce within the area for which a market is proposed to be established or otherwise, the State Government may, by notification, and in such other manner as may be prescribed, declare its intention to "trader" means a person who in his normal course of business buys or sells any notified agricultural produce, and includes a person engaged in processing of agricultural produce, to establish a market ¹[for regulating the purchase and sale of agricultural produce in such area] as may be specified in the notification.

(2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the notification shall be considered by the State Government.

Section 4: Establishment of market and of regulation of marketing of notified agricultural produce therein.-

After the expiry of the period specified in the notification issued under section 3 and after considering such objections and suggestions, as may be received before such expiry and making such inquiry, if any, as may be necessary, the State Government may, by another notification, establish a market for the area specified in the notification under section 3 or any portion thereof for the purpose of this Act ²[in respect of the agricultural produce specified in the Schedule] ³[and the market so established shall be known by the name as may be specified in that notification].

Madhya Pradesh Krishi Upaj Mandi (Allotment of Land and Structure of Market Committee/Board) Rules, 2005⁴¹

These rules provide for the ownership and management of land by the Market Committee/Board in the Non-scheduled Area⁴². reservation of land/ structure for the Scheduled Caste/ Scheduled Tribe Category in the Non-scheduled area in the enabling provision.

Rule 13: Reservation of land/structure for the Scheduled Caste/Scheduled Tribe category

- (1) A person or firm, society or agency belonging to Scheduled Castes and Scheduled Tribes operating as market functionary desirous of allotment of land or structure may participate in auction/tender, and highest bidder may be allotted the land or structure, as the case may be, as per eligibility under the provisions of these rules.
- (2) Ten percent of allocable land/structure may be kept for allotment to such categories.

The formulations are given below:

Insertion of Rule 13-A, Madhya Pradesh Krishi Upaj Mandi Rules, 2005

Rule 13-A: Reservation of land/structure for the Scheduled Caste/Scheduled Tribe category in Scheduled Areas

- (1) *A person or firm, society or agency belonging to Scheduled Castes and Scheduled Tribes operating as market functionary desirous of allotment of land or structure in a Scheduled Area may participate in auction/tender, and highest bidder may be allotted the land or structure, as the case may be, as per eligibility under the provisions of these rules.*
 - (2) *Such percent of allocable land/structure shall be proportional to that of the population of the Scheduled Caste/Scheduled Tribe in a given Scheduled Area.*
- Explanation- The word 'Scheduled Area' means the Scheduled Area, as referred to in clause (1) of Article 244 of the Constitution of India.*

Amendment and insertion to Section 50 (1) (e) MPPRGSA: Functions of Janpad Panchayat

Section 50 (1) (e) management of public markets, public melas and exhibitions excluding the management of public markets, public melas and exhibitions in Scheduled Areas.

Amendment to Section 58 MPPRGSA

Section 58 Regulation of markets and melas

- (1) *Save as provided in the Madhya Pradesh Krishi Upaj mandi Adhiniyam, 1972 (No. 24 of 1973), no person except Gram Panchayat in consultation with Gram Sabha shall within the Gram Panchayat area set up, establish or use any place for the purpose of a market or a mela including public market or public mela, as the case maybe.*

⁴¹ Notification No. D-15-19-2002-XIV-3, dated 14-10-2005, published in M.P. Rajpatra (Asadharan), dated 41-10-2005 at pp. 1030 (7-13)

⁴² Rule 4 of M.P. Krishi Upaj Mandi (Allotment of Land and structure of Market Committee/Board) Rules, 2005

Provided that the State Government , may by notification, declare any market or mela to be public market or public mela and the public market or public mela, as the case maybe, so declared shall vest in the Janpad Panchayat. (to be deleted)

(2)The State Government may make rules to regulate the market or the mela specified in sub-section (1)

Amendments to Section 129-C (v) MPPRGSA

*(v) To **establish, regulate, manage village markets, public markets, public melas including cattle fairs, by whatever name called, through the Gram Panchayat in consultation with the Gram Sabha;***

Amendments to Section 129-D Functions of Gram Panchayat

*(ii) To **establish, regulate, manage in consultation with the Gram Sabha any village markets, public markets, public melas including cattle fairs, by whatever name called,***

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))**

MPPRGSA does not vest the Gram Sabha and the Panchayat at appropriate level with the powers to control money lending in Scheduled Areas. The MPPRGSA needs to be amended to vest the power relating to money lending to the Gram Sabha as well as to the PAL.

Suggested amendments in MPPRGSA

Insert sub-section in Section 129-C (vi-f) MPPRGSA

129-C (vi-f) The Gram Sabha along with the Panchayat at appropriate level for respective jurisdictions shall exercise control over money lending and money lenders who operate in Scheduled Areas.

Further, the Madhya Pradesh Money Lending Act, 1934 has yet to be amended giving the Gram Sabha and the PAL, the power to control money lending in Scheduled Areas. Section 11-B, also needs a review in this context.

Section 11-B: Registration of Moneylenders and Registration certificate⁴³-

(1) Every person who carries on or intends to carry on the business of moneylending shall get himself registered by an application made to the Registering Authority of that area in which he carries on or intends to carry on such business and, on such registration, the Registering Authority shall grant a registration certificate to him in such form as may be prescribed:

Provided that no person being a firm or partner of a firm of moneylenders shall be so registered except upon production before the Registering Authority of a certified copy of an entry showing such person as the firm or partners, as the case may be, made in the register of firms under Section 59 of the Indian Partnership Act, 1932 (No. 9 of 1932)

Provided further that no registration certificate shall be granted to carry on the business of moneylending in the Scheduled areas referred to in clause (1) of Article 244 of the Constitution.

(2) The application made under sub-section (1) shall be in writing and shall specify the area in which the applicant carries on or intends to carry on the business of moneylending and such other particulars as may be prescribed

The Madhya Pradesh Money lenders Act, 1934 provides for registration of moneylenders and registration certificate – by registering authority. The Act defines the *Registered Authority* in rural area, where the tehsildar is the registering authority.⁴⁴ It further requires that every registering authority to maintain a register of moneylenders and where such register is a public document. However, it does not refer anything specific to Scheduled Area. The second proviso to Section 11-B refers to Scheduled Areas vis-à-vis moneylenders registration however, total exemption from registration procedure does not offer a solution as to empowerment of Gram Sabha and PAL of such Scheduled Areas. Although there is a general attempt to decentralization, it is not as per PESA requirements in Scheduled Areas. Further, it also needs to be ascertained whether there are any operational changes that have been brought out at the executive level to affect the transfer of powers to control money lending in the hands of the Gram Sabha along with the PAL.

Also, the Revenue Department of the Government of Chhattisgarh has issued a letter (No. F4-52/Revenue/2006) dated 16.10.2008 and accordingly in Scheduled Areas the registration of money lenders and the registration certificate is to be issued by Commissioner, Land Records who has been empowered. This is *prima facie* bad in law and against the spirit of PESA. Any notification, circular or letter issued by M.P. government which is in congruence with the intent of the abovementioned letter has to be withdrawn.

⁴³ Substituted by M.P. Act No. 13 of 2001 (w.e.f. 20-4-2001)

⁴⁴ Section 11-A , M.P. Moneylenders Act, 1934

Suggested amendments Madhya Pradesh Money Lenders Act, 1934

Insertion to section 2-A (3)

The money lender shall also forward a copy of the voucher delivered to the debtor under section (1) to the Sub-Divisional Officer concerned and in Scheduled Area to the Gram Sabha within such time as may be prescribed.

Insert Proviso in Section 3(1)(c)

“Provided in Scheduled Areas, a copy of every statement of account furnished to a debtor under clause (b) shall be furnished to the concerned Gram Sabha where the debtor is ordinarily a resident

Insert Proviso in Section 11-A

“Provided that in Scheduled Areas, this power shall be exercised by the Gram Sabha along with the Panchayat at appropriate level for respective jurisdictions”

Insertion to section 11-B (1) after first proviso (substitute for second proviso)

Provided that in Scheduled Areas, the application for registration shall be made to the Gram Sabha along with the Gram Panchayat. The Gram Sabha in its meeting shall enter the name of the applicant money-lender along with such particulars as the Gram Sabha may decide, in the register of money lenders and Gram Panchayat shall issue a certificate of registration to him in the prescribed format. A copy of the certificate of registration would be submitted to the Sub-Divisional Officer by the Gram Panchayat.

Insertion to Section 11-F (1): Madhya Pradesh Money Lender’s Act, 1934

Provided that the person who holds a valid registration certificate shall not carry on the business of money lending in the area of a Gram Panchayat or shall not lend money to a member of a Gram Sabha unless (subs. for ‘if’) a resolution to that effect is duly passed by the Gram Sabha of such a Gram Panchayat.

Insertion in sub-section(2-A) to 11-F

(2-A) whoever contravenes the provisions of sub-section (1) in any Scheduled Area shall be punishable with imprisonment which may extend to two years or with fine which may extend to ten thousand rupees or with both.

Explanation- The word ‘Scheduled Area’ means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.

In the current context, Moneylenders Act and Rules must be consolidated into single Act and one whole provision should be dedicated to clarify on the registration of moneylenders with respect to Gram Sabha and PAL for respective jurisdiction.

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)(i))

There are several related provisions in the MPPRGSA as follows: The words development schemes have also been used instead of local plans and tribal sub plans.

Section 7(1) (j-iv) MPPRGSA: Powers and functions and annual meeting of Gram Sabha
To control local plans, resources and expenditure for such plans.

Section 49-A: Other functions of the Gram Panchayat

(iii) Implement, execute and supervise development schemes and construction work within the Gram Panchayat

(xv) To exercise control over local plans, resources and expenditure for such plans

Section 50: Functions of Janpad Panchayat

(1-A) Subject to the provisions of this Act and rules made thereunder and subject to Policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of the Janpad Panchayat to-

(i) prepare the annual plan in respect of the schemes of economic development and social justice entrusted to it by the Act and those assigned to it by the State Government or the Zila Panchayat and submission thereof to Zila Panchayat within the prescribed time for integration with the district Panchayat plan;

(ii) consider and consolidate the annual plan in respect of the scheme of economic development and social justice of all Gram Panchayat and the Janpad Panchayat and submission of the consolidated plan to Zila Panchayat;

(iii) prepare plan of works and development schemes to be undertaken from Janpad Panchayat Fund;

(iv) undertake regional planning and infrastructural development within the Janpad Panchayat;

(v) sanction, supervise, monitor and manage the works of development schemes from Janpad Panchayat funds and for this purpose incur expenditure there from;

Section 52: Functions of Zila Panchayat

(1) Subject to the provisions of this Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of Zila Panchayat

(iii) Co-ordinate, evaluate, and monitor activities and guide the Janpad Panchayat and Gram Panchayat;

(iv) ensure overall supervision, co-ordination and consolidation of the plans prepared by the Janpad Panchayat:

(v) ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central or State Government;

(vi) ensure the execution of transferred or delegated functions, works, schemes and projects of the Central or State government

Section 129-C: Powers and functions of Gram Sabha in scheduled area

(vi) To control local plans, resources and expenditure for such plans including tribal sub-plans and

Section 129-D: Functions of Gram Panchayat

(vii) To exercise control local plans, resources and expenditure for such plans including tribal sub-plans and

Section 129-F Powers of Janpad and Zila Panchayat

(iii) To exercise control local plans, resources and expenditure for such plans including tribal sub-plans and

Apart from the above detailed provisions add a generic provision as follows:

In Scheduled Areas, the Gram Sabha along with the Panchayat at Appropriate level within which such local plans including tribal sub-plans are implemented shall have control⁴⁵ 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.

⁴⁵ Control has to be detailed