Panchayat Extension Act: A Legal Analysis With Strategies

The State of Chhattisgarh

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Introduction

The history of local self-government initiatives in the State of Chhattisgarh is inextricably tied with the efforts made to establish Panchayat Raj institutions in the erstwhile, undivided State of Madhya Pradesh. In consonance with the mandate of Part IX (‘Panchayats’) of the Constitution, the then undivided State of Madhya Pradesh had enacted the Madhya Pradesh Panchayat Raj Adhiniyam, 1993. This Act was consolidatory, establishing Panchayats for effective involvement of such institutions “in the local administration and development activities”\(^1\) in non-tribal (or non-“Scheduled”\(^2\)) areas. In 1997, the Act was amended\(^3\) to incorporate the requirements of the Panchayat (Extension to Scheduled Areas) Act, 1996 [PESA]. PESA sought to extend the mandate

\(^1\) Preamble, M. P. Panchayat Raj Adhiniyam (1993)

\(^2\) “Scheduled Areas” are defined as those areas referred to in clause (1) of article 244 of the Constitution [section 2, PESA infra].

of Part IX of the Constitution to “Scheduled Areas”, with the proviso that the features mentioned under section 4 therein should necessarily find mention in any law made under that Part [see, Annexure I]. Chapter XIV-A (Special Provisions for Panchayats in the Scheduled Areas) was therefore added to the MP Panchayat Act, granting certain additional functions and powers to the panchayats in addition to those already granted under the earlier, unamended Panchayat Raj Adhiniyam, 1993.

While the MP Panchayat Act did assimilate many of the features detailed by section 4 of PESA, certain others were omitted. The omitted features, namely those mentioned under clauses (i), (k), (m)(i), (ii), (iii) and (v) of section 4 (PESA), however find mention in other closely related enactments of the then State of Madhya Pradesh (including, the M. P. Excise Act, M. P. Land Revenue Code, M. P. Mining Regulations, and M. P. Forests Regulations). Since Part IX of the Constitution does not specifically mention the number or nomenclature of laws that may be enacted for the purposes of furthering the constitutional intent of that Part, it may reasonably be discerned that such related laws (as have been amended for purposes of furthering Panchayat Raj) are to be considered as ‘law under that Part’. This understanding is manifest from the wordings of Article 243C (1) and Article 243G which are general in nature and do not spell out the contours of the law required, save that it be for the purpose of establishing Panchayat Raj. The entire body of laws suitably amended to establish local self-government in Scheduled Areas would therefore have to be considered to reach the conclusion that the conditions stipulated under section 4 (PESA) have been satisfied.

After the creation of Chhattisgarh State, it was found expedient by the legislature to enact its own Panchayat Raj Adhiniyam. Consequently, the Legislature of Chhattisgarh enacted the Chhattisgarh Panchayat Raj Adhiniyam [CGPRA]. The CGPRA adopts the provisions, and spirit, of the MP Panchayat Act. Paralleling the methodology followed by the then undivided State of Madhya Pradesh, the incorporation of the features mentioned in section 4 (PESA) have required amendments not only to the CGPRA, but also to statutes interlinked with the CGPRA. This Report attempts to study the relation between the CGPRA [as amended to conform with PESA] and the associated statutes, with a view to determining their compatibility in relation to local self-government in Scheduled Areas.

The Report is divided into two broad categories – Legal Interpretation and Case Studies. Accordingly, the latter considers the administrative, judicial and civil society practice at State, District (Rajnandgaon) and Block (Ambagar Chounki) levels. The Report

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4 The Article reads as follows: “Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats…” [emphasis supplied]

5 The Article reads as follows: “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government…” [emphasis supplied]

6 Vide notification (no. 616/21 – A / VT/2001) the MP Panchayat Raj Adhiniyam has been adopted by the State of Chhattisgarh w.e.f. November 2000. Hence in the entire act the word Madhya Pradesh has been replaced by Chhattisgarh. Also by Notification No. 3133/P/VT/2002 dated 23 October, 2002, 71 other enactments relating to Panchayats have been adopted; and by Notification No. D/276/2000 dated 11 December, 2000 the MP Gram Nyalaya Adhiniyam 1996 has been adopted.
concludes by observing that though legal harmony exists between the varied laws appertaining to Panchayat Raj, it is perhaps the exercise of those laws that has suffered. This realisation is not peculiar to laws relating to Panchayat Raj, but assumes a far more crucial stature owing to the direct repercussions of Panchayat laws on good governance.
PART I

PESA – LEGAL INTERPRETATIONS

1.1 Structure and Functions of Gram Sabha

One of the most significant chapters added vide CGPRA (Amendment) Act 43 of 1997 is Chapter 14A regarding special provisions of Panchayat in the Scheduled Area. The amendment lists out several provisions in order to reflect the spirit of PESA. Gram Sabha itself has been re-defined for the purposes of Scheduled Area, which 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. The Panchayati Raj (Sansodhan) Adhiniyam 1999 has altered the definition of Gram Sabha wherein it includes the person not only within the revenue village but also those persons, which are under forest village. This assumes significance because perhaps no other State recognizes or equates the forest villages to revenue villages.

Although the power to manage the natural resources including land, water and forest within the area of the village is required to be in accordance with its tradition, it further requires that such traditions should be in harmony with the provisions of the Constitution and with due regard to the spirit of other relevant laws for the time being in force.

Significantly, the power to exercise control over institutions or functionaries in all social sectors has been extended not only in scheduled areas but also to all Gram Sabhas in 1999. Further, in that year the power of the Gram Panchayat to carry out recommendations and decisions made by the Gram Sabha had also been extended to those in Scheduled Areas. The power to plan, own, and regulate use of, minor water bodies including the power to lease out such minor water bodies for the purposes of fishing and other commercial purposes has also been extended to all Gram Sabhas. The power to control local plan resources including tribal sub plans now vests with the Janpad Panchayat and Zila Panchayat alone.

The Provisions of Panchayati Raj Dwitiya (Sansodhan) Adhiniyam 1997 has introduced a unique provision whereby the representation of women is now ensured in the meetings of the Gram Sabha, as it is mandatory for women to be present to complete the quorum in the meetings of the Gram Sabha.

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7 Forest villages need to be distinguished with village forest. While forest village is essentially an administrative category, the village forest is a legal category under the Indian Forest Act of 1927. The forest villages were those where people were brought into by the forest department to particular patches of forest to conduct forestry operations and were given pieces of agricultural land to meet their bonafide requirements of subsistence.

8 See Section 6 (2) of the Chhattisgarh Panchayat Raj Adhiniyam 1993 as amended by the Chhattisgarh Panchayat Raj (Sanshodhan) Adhiniyam, 1996.
The Amendment Act 43 of 1997 has made substantial provisions describing the powers and functions of the Gram Sabha. The Gram Sabha inter alia is required to lay down principles for identification of schemes as well as their priority for their economic development. The Gram Sabha is also required to approve all plans, programmes and projects for social and economic development prior to their implementation and has also been given the powers to ascertain and certify proper utilization of funds for such plans etc. by the Gram Panchayat. In addition to the above the Gram Sabha is also required to identify and select persons as beneficiaries under the poverty alleviation and other programmes.

The Panchayati Raj (Sansodhan) Adhiniyam Act of 1999 (hereinafter Amendment Act of 1999) further amends the powers and functions of the Gram Sabha. The said amendment has now given the powers to the Gram Sabha to exercise control over institutions or functionaries in social sectors, which may be transferred to or appointed by the Gram Panchayat. It has also been given the power to manage natural resources including land, water and forest within the area of the village in accordance with the provisions of the Constitution and relevant laws for the time being in force (emphasis supplied). A plain reading of this section makes it clear that the other specific laws on natural resources will have precedence over generally worded powers of the Gram Sabha. Thus for example specific law on forest such as the Forest Conservation Act, 1980 will have precedence over the Amendment Act of 1999 as it would be in accordance with the relevant law in force. The Amendment Act of 1999 also requires that the Gram Panchayat shall place all such matters before the Gram Sabha which the Janpad Panchayat, Zilla Panchayat, Collector or Authorized Officer in his behalf may be required to place. The most important provisions that the amendment has provided is that Gram Panchayat has to mandatorily carry out the recommendations of the Gram Sabha with regard to the matters that have been enlisted above. It is worth mentioning that this is a new reversal of roles as prior to these amendments the Gram Panchayat was required only to “consider the suggestions” made by the Gram Sabha.

1.2 Inter Tier Allocation of Functions

The Panchayat system in Chhattisgarh is classified into three tiers viz. Gram Panchayat, Janpad Panchayat and Zila Panchayat. Detailed provisions of these three tier institutions have been provided under the Act, which includes meetings of Gram Sabha, terms of office, qualifications, no confidence motion etc. A new system of recall has also been introduced for the office bearers of the Gram Sabha through a secret ballot by a majority of more than half of the total number of members constituting the Gram Sabha. However, a prior notice signed by not less than one third of the total members of Gram Sabha is required and is to be presented to the prescribed authority.

The Panchayat Act provides, inter-alia, for subordinate agencies, which may be appointed for discharging the functions and duties of the Gram Panchayat. The Gram Panchayat is empowered to constitute not more than three standing committees, which shall exercise
powers as assigned to them, by the Gram Panchayat. The Janpad Panchayat and Zilla Panchayat are required to constitute the following committees namely, General Administration Committee, Agricultural Committee, Education Committee, Communication and Works Committee and Co-operation and Industries Committee. In addition to this they may also constitute such other committees as may be required.

The Act enumerates numerous functions in the jurisdiction of Gram Panchayat, however, it is also made subject to the availability of funds. The functions include regulating grazing land, establishment of rights and regulation of markets other than public markets, plantations and preservation of Panchayat forests. The Act provides that the Gram Panchayat is required to carry out the directions or orders given by the State Government, Collector or any other officer authorized by him⁹. It can be inferred that the Gram Panchayat is required to act as an agent of State not necessarily reflecting the mandate of the Gram Sabha. Several new functions were added to the list of Gram Panchayat vide amendment Act 2 of 1997. These include preparing annual plans for economic development and social justice, selection of beneficiaries under various programmes with the approval of the Gram Sabha, to lease out any minor water body for the purposes of fishing and other commercial purposes, regulate the use of water of rivers, streams and minor water bodies for irrigation purposes and exercise control over local plans and its resources as well as over institutions and functionaries in all social sectors. The above functions of the Gram Panchayat seem to give conflicting signals when its role is compared to the Gram Sabha. As mentioned earlier similar functions have been added in the list of functions to be performed by the Gram Sabha as per the Amendment Act of 1999. It is therefore unclear whether for example the identification and selection of persons as beneficiaries would be done by the Gram Sabha as per the Amendment Act 43 of 1997 or the Gram Panchayat as per the Amended Act 2 of the 1997. A plain reading of the provisions would necessarily make the Gram Sabha the nodal agency for identification of beneficiaries. However, amendments need to be made in the list of functions that are to be performed by the Gram Panchayat. This will clear the unnecessary ambiguity in the roles of the Gram Sabha and the Gram Panchayat.

The Janpad Panchayat is required to consider matters relating to integrated rural development, agricultural, social forestry etc. along with preparation of Annual Plans for economic development and social justice etc. The Janpad Panchayat is also the coordinating and guiding agency for the Gram Panchayat within the block. However, no details as to the manner in which such co-ordination is to be brought about finds mention under the Act.

The role of the Zila Panchayat has been enhanced. It is a nodal coordinating agency of the district, which ensures the completion of all the function of the Janpad and Gram Panchayat. The Amendment Act 43 of 1997 has also merged the District Rural Development Agency with the Zila Panchayat. The Amendment Act 43 of 1997 further provides that the Panchayat at appropriate level shall have the powers and the authority as may be necessary to enable them to function as institutions of self-government.

⁹ Section 49 (29-a) of the Chhattisgarh Act No.1 of 1994.
The CGPRA has assigned special powers to the Gram Panchayat in respect of public health facilities and safety, which includes the power to regulate the use of water and ensure environmental control. These general provisions of the Gram Panchayat and the provisions under the Gram Sabha can come into conflict when there are overlapping jurisdictions. The Gram Panchayat has been also provided with penal provisions in case of unauthorized constructions, hindrance, obstructions, encroachments etc. Notably, the Gram Sabha has not been empowered through penal provisions.

A unique feature of the Amendment Act 43, 1997 is that it introduces the concept of colonisation within the Gram Panchayat area. Any person who intends to undertake the establishment of colony in the Gram Panchayat Area may apply to the SDO (Revenue) for grant of a registration certificate, which entitles the coloniser to undertake the development of colonies in the Gram Panchayat Area.

While on one hand numerous powers have been entrusted to the various level of Panchayat, on the other, the power to control the Panchayat vests with the Government\(^\text{10}\). The Authorized Officer of the State Government has the power to inspect the proceedings of the Gram Sabha and of the Panchayat. Further, the State Government or the prescribed authority has the power to suspend the execution orders (license etc.) by a Panchayat on certain conditions. However, the Amendment Act 2 of 1997 gives the panchayat a reasonable opportunity of being heard\(^\text{11}\). Further, the State Government also has the power to issue orders directing the Panchayat for execution of such work, which it deems fit in public interest. Lastly, the State Government has the all-powerful provision of dissolving the Panchayat in case of default or abuse of power or its failure to carry out any order of the State Government. Although the provision of reasonable opportunity of being heard is provided this provision reinforces the authority of the State. There is also a provision for separate and independent audit organization under the control of the State Government to perform audit of accounts of the Panchayat. This clearly demonstrates that there are ample provisions, which enable the State to control the functions of the different levels of Panchayat.

1.3 Subject Matter state laws and the Gram Sabha

A careful reading of the various amendments to the CGPRA makes it amply clear that there are vast overlaps of jurisdiction between the Gram Sabha and Gram Panchayat. Clear delineation of power and authority on similar resources has still not been done. The case of minor water bodies or control of local plans or laws of development in the social sector are still being interchangeably assigned to both Gram Sabha and Gram Panchayat. In case of Scheduled Areas it is generally worded that the Gram Panchayat would act under the direct supervision of the Gram Sabha. This is significant because it at least places the hierarchy of the power structure at the village level and in that sense it is perhaps a very significant move in the empowerment of Gram Sabha. These new areas have been dealt with in other relevant laws in force and amendment has been made in

\(^{10}\) See Chapter X of Chhattisgarh Panchayati Raj Adhiniyam 1993.

\(^{11}\) See Amended Sub Section (2) of Section 85 vide Amendment Act 43 of 1997.
those specific legislation relating to, inter alia, excise, money lending and land alienation. A legal study of laws relating to the establishment and functioning of Panchayat Raj in Chhattisgarh – that is, as to whether they be complimentary or contradictory to each other - would require analysis on two planes: ideological and provisional.

(a) Ideological relationship between CGPRA and related laws

As mentioned in the introduction to this report, all the features mandated by section 4 (PESA) were not accommodated into the CGPRA. Although section 7 read with sections 129-C, 129-D and 129-F provide Panchayat Raj institutions with a wide gamut of powers and functions, those features specifically mentioned under clauses (i), (k), (m)(i), (ii), (iii) and (v) of section 4 (PESA), do not find explicit mention in the CGPRA itself. Rather, they are included in statutes in pari materia with the CGPRA. The most prominent of those statutes/bye-laws amendments are: C. G. Abkari (Sanskodhan) Adhiniyam, 1997 [CG Excise Act amendment]; Bhu-Arjan Evam Punarwas (Rajaswa) directives [CG Land Acquisition and Resettlement directives]; C. G. Khanij Gaud Niyamavali, 1996 [CG Mining Regulation]; Laghu Vanopaj directives [CG Forest Produce directives]; C. G. Panchayat Raj (Dwitiya Sanshodhan) Adhiniyam, 1997; and, C. G. Panchayat Raj (Sanshodhan) Adhiniyam, 1999.

The issue therefore posited: how do the amendments to statutes pari materia discern ideological commonality with the constitutionally envisaged local self-government initiatives? Guided by the rules of statutory interpretation, it is trite law that any and every statute must of necessity be construed in its entirety. That is, a statute must be read as a whole, including within our construction, the general scope of the statute and the mischief that it was intended to remedy. This translates into scrutiny of the changes that take place in the law as well. The fact that the said statutes in pari materia were ‘amended’ to include principles of local self-government unmistakably indicates the legislative intent to effect an ideological synchrony between the various laws.

The amendments illustrate that all laws that have bearing on the establishment and successful functioning of Panchayat Raj institutions are directed towards that objective. The concept of local self-government has therefore been encouraged to seep in, statutorily, if not in practice.

(b) Provisional relationship between CGPRA and related laws

12 “Statutes are in pari materia which relate to the same thing or person, or to the same class of persons or things” [United Society v Eagle Bank, (1829) 7 Connecticut 457 (470)].
Thus, the *Chhattisgarh Land Revenue Code (2nd Amendment) Act of 1997* has amended section 170B for special provision for land alienation vis-à-vis the Gram Sabha. It provides that if a Gram Sabha in a Scheduled Area and any person other than a member of aboriginal tribe is in possession of such land without any lawful authority then such land shall be restored to the tribal person to whom it originally belongs. In case the Gram Sabha fails to restore the possession of such land such matters will be referred to the Sub Divisional Officer who has been given a time limit of restoring possession within three months from the date of receipt of reference. In this case the Gram Sabha needs to be given full authority along with resources to prevent land alienation in Scheduled Areas. Any intervention, by the State, even under the garb of reference, would only lessen the effectiveness of the Gram Sabha in Scheduled V Areas.

The *Chhattisgarh Excise Act of 1915* has also been amended vide *Chhattisgarh 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. Firstly, in respect of manufacture of country spirit and its distillation, possession and consumption the Excise Act is not applicable to the members of Scheduled Tribe in the Scheduled Areas. The manufacture of country spirit in domestic consumption for consumption at social and religious function is permitted within Scheduled Area. However, sale of country liquor is prohibited. Significantly, the Gram Sabha has been given power to regulate and prohibit manufacture and sale as well as consumption of intoxicant within the territorial areas of the Gram Sabha. It is important to note that this power is not retrospective and there is a clear proviso, which mandates that an order of prohibition passed by the Gram Sabha, shall not be applicable to any manufactory, which has been established prior to the coming of the said amendment. In our opinion, this clearly weakens the role of the Gram Sabha in its aims to empowerment. It is precisely the existence of numerous and perhaps illegal manufacturing units of intoxicants which has affected the quality of life in such marginalised areas. Therefore, not making this provision retrospective clearly defeats the purpose of this amendment. Although, no new manufactory can be established without the consent of the Gram Sabha there is a need to make a provision relating to the prohibition in retrospective in case of manufactory engaged in the manufacture of any intoxicants. Further it provides that if the Gram Sabha prohibits the manufacture, sale, possession and consumption of intoxicants in its area, then no new manufactory of intoxicants shall be established, no new outlet for sale shall be opened and no person shall manufacture or possess or transport or sell or consume any intoxicants within the Gram Sabha area. As regards the existing outlet, if any, then it shall be closed from the first day of the next financial year immediately following the order of prohibition. This prohibition seems to be at variance with the proviso earlier explained which makes the prohibition not retrospective. It can be deduced that on one hand the existing manufactory may not be closed and on the other, no person will manufacture or possess etc. any intoxicants in case there is an order of prohibition by the Gram Sabha. It has also been provided under the amendment Act that the Gram Sabha is fully empowered to approach the SDM in case any assistance is required for the enforcement of the decision of the Gram Sabha.
The CG Bhu-Arjan Evam Punarwas (Rajaswa) directives require that the mandate of section 4, clause (i) (PESA) be implemented. The directives read that the State Government has implemented a policy whereby any land acquisitions executed under the Land Acquisition Act, 1894 would require the prior approval of the Gram Sabha or the Panchayats at the appropriate level. Therefore, before any notice for acquisition of land is issued under section 4 of the Land Acquisition Act, 1894 the same would have to be scrutinised and approved by the local self-government institution as per section 4 (PESA).

The C. G. Khanij Gaud Niyamavali, 1996 requires that the mandate of section 4, clause (m) (PESA) be implemented. Therefore, the CG Mining Regulations have been so amended as to necessitate the “recommendations of the Gram Sabha or the Panchayats at the appropriate level” prior to grant of mining lease by the concerned authorities. This allows the local self-government institution to be included in the process of determining the best use of their land resources.

The Laghu Vanopaj directives conform to section 4, clause (m) (ii) (PESA). The State Government has issued a number of directives for allowing the ownership of minor forest produce to be passed onto the Panchayats in the Scheduled Areas. The directives allow for ownership to pass to the local self-government institution, however, it also requires that trade in such produce must be under the aegis of the cooperative societies and the CG Minor Forest Produce Trading and Development Federation.

1.4 Overlapping Jurisdictions

The Government of Chhattisgarh has also implemented the Chhattisgarh Zila Yojana Samiti Adhiniyam (herein after Act No. 19 of 1999) for development of districts as a whole. This is a unique legislation in many ways. The District Planning Committee (DPC) constituted under this would be a nodal agency, which will co-ordinate matters of common interest between the Panchayat and Municipality. It is required to prepare a draft development plan which will be an outcome of all the consolidated plans prepared by the Panchayat and Municipality in the district. The Committee would identify the local needs and objectives, collect and update the information relating both natural and human resources of the district to create a sound database for de-centralized planning. The Committee also determines the policies and programmes and priorities for the development of the district and to ensure maximum and judicious utilization and exploitation of available natural and human resources. This unique effort by the Governments of Madhya Pradesh and Chhattisgarh (since the law has essentially been adopted from the statute books of undivided M.P), is a result of the 74th Amendment relating to Municipalities. However, it is still not clear whether the DPC will have the ultimate say in the functioning of the Panchayat especially in Scheduled Areas. At the

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16 Orders are similar to those listed in: Important Amendments in Statutes and Bye-laws for Scheduled Areas – Based on the Bhuria Committee Recommendations on the Panchayat(Extension to Scheduled Areas) Act, 1996, Tribal Welfare Department, Government of Madhya Pradesh, at p. 8.
moment it seems like an over-riding body, which will co-ordinate every possible plan under the Panchayat in every part of the State including the Scheduled Area.

It would be worthwhile to describe another legislation that potentially has implications on the dispute resolution mechanism of the Gram Sabha especially in Scheduled Areas. The Chhattisgarh Gram Nyayalaya Adhiniyam 1996 has been enacted to provide for the disposal of simple cases in Rural Areas. A Gram Nyayalaya may be established in any area of 10 or more Gram Panchayat constituting a circle for the purpose of this Act. The Gram Nayayalaya is deemed to be a Civil Court with a pecuniary jurisdiction with one thousand rupees where it may try offences under Indian Penal Code, Cattle Trespass Act, Madhya Pradesh Land Revenue Code etc. It is also required to make every endeavour to bring about reconciliation between parties before proceeding to hear any case. In such Courts, Legal Practitioners are not allowed. It is pertinent to note that no special provision, taking into account the customary mode of dispute resolution, have been made to deal with cases in Scheduled Areas.

Yet another de-centralized mechanism adopted by the Government of Chhattisgarh is the enactment of Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhiniyam 1999 which provides for farmers’ participation in the management of irrigation system. For this purpose areas have been de-alienated as “water users area” and a “water users association” is also formed. The Act provides further for ‘Managing Committee’ of every water users association, which in turn comes within the delineated ‘distributory area’, headed by the ‘distributory committee’. The distributory area comes within the broader purview of ‘project area’, which is managed by the ‘project committee’. Essentially every ‘command area’ may be delineated as project area. The dispute resolution bodies are also embedded within the hierarchical structure of these bodies. For example, disputes of water users association are to be resolved by the Distributory Committee and so on. What is significant is that such a hierarchical structure regulates most of the command area of the State and thus it seems to overlap with the powers that have been granted to the Gram Sabha for managing its water bodies especially for the purpose of irrigation. This becomes a little more complicated in Scheduled Areas because the power to manage minor water bodies now vests with the Gram Sabha and the role between the members of the water user association and the members of the Gram Sabha for a given Scheduled Area or part thereof is unclear under the Chhattisgarh Act No.23 of 1999.

1.5 Recent Developments:

There have been three new enactments of Chhattisgarh (which are not adopted):
- The Chhattisgarh Panchayat Shala Shiksha Samvida Shikshak (Niyukti Tatha Seva Shartein) Niyam, 2001, applicable on “samvida shala shikshak’’ of the schools under the control of the Janpad Panchayats
- The Chhattisgarh Gram Nyayalaya Niyam, 2001, for the local court system

17 Section 19 of Chhattisgarh Act No.26 of 1997.
1.6 Strategies in Law:

- The various standing committees for specific subject matter under the Gram Swaraj Act of 2001 and the specialized committees such as JFM committees on specific resources supported by state bureaucracy often overlap in their jurisdiction, functions and financial outlays. This creates immense confusion at the field level and often becomes a project driven activity instead of a stable and sustainable institution of governance of natural resource management. This anomaly needs to be rectified on an urgent basis to minimize the conflicts at the village level.

- Necessary amendments need to be made in the list of functions that are to be performed by the Gram Panchayat. This will clear the unnecessary ambiguity in the roles of the Gram Sabha and the Gram Panchayat which have overlapping jurisdictions.

- While on one hand numerous powers have been entrusted to the various level of Panchayat, on the other, the power to control the Panchayat vests with the Government. The Authorized Officer of the State Government has the power to inspect the proceedings of the Gram Sabha and of the Panchayat. Further, the State Government or the prescribed authority has the power to suspend the execution orders license etc. by a Panchayat on certain conditions. This is against the spirit of PESA and needs to be corrected urgently.

- The Gram Sabha has been given power to regulate and prohibit manufacture and sale as well as consumption of intoxicant within the territorial areas of the Gram Sabha. It is important to note that this power is not retrospective and there is a clear proviso, which mandates that an order of prohibition passed by the Gram Sabha shall not be applicable to any production unit that has been established prior to the coming of the said amendment. This clearly weakens the role of the Gram Sabha in its aims to empowerment. It is precisely the existence of numerous and perhaps illegal manufacturing units of intoxicants which has affected the quality of life in such marginalised areas.

- A hierarchical structure through a specific law on irrigations regulates most of the command area of the State and thus it seems to overlap with the powers that have been granted to the Gram Sabha for managing its water bodies especially for the purpose of irrigation. This becomes a little more complicated in Scheduled Areas because the power to manage minor water bodies now vests with the Gram Sabha and the role between the members of the water user association and the members of the Gram Sabha for a given Scheduled Area or part thereof is unclear under the Chhattisgarh Act No.23 of 1999. These anomalies need to be clarified on an urgent basis.
Lastly, it would be noticed that the CGPRA is an Act that ‘consolidates’ the law relating to establishment of Panchayats.\(^{18}\) As per the accepted definition of ‘consolidating’ statutes, the purpose of such a statute is “to present the whole body of statutory law on a subject in complete form…”\(^{19}\). It is therefore patent that if the CGPRA is to be accorded the status of a consolidating statute, it must encompass all the features of self-government in Scheduled Areas as envisaged by PESA. Since, the features of section 4, clauses (i), (k), (m)(i), (ii), (iii) and (v), are not explicitly mentioned in CGPRA itself but rather in statutes in \textit{pari materia}, it appears that the CGPRA is not a ‘consolidating’ statute in the true sense of the term. It would therefore have been apposite if the CGPRA had, in the least, referred to the statutes in \textit{pari materia}. Devoid of such reference to related statutes, the CGPRA represents a statute that ostensibly embodies \textit{all} provisions necessary for the establishment of Panchayat Raj institutions. As the study above would indicate, the CGPRA of itself does not conform entirely to section 4 (PESA).

\(^{18}\) \textit{Preamble}, CGPRA.

\(^{19}\) Halsbury’s Laws of England, 4\textsuperscript{th} ed. Vol. 44, at p. 489.
PART II

PESA – CASE STUDIES

A field visit was undertaken to understand the field realities of implementation of PESA in a Scheduled V block “Ambagad Chowki” in Rajnandgaon district. It was observed that the level of awareness of the government officials as well as the elected representatives was low regarding the implementation of PESA and the directives of the same. The CEO of the Zila Panchayat, Mr. Khalko was contacted to find out the realities of implementation of PESA at the district level. It was found that the official was not fully aware of the status of implementation of PESA. The team was then directed to meet Mr. Bajpai (District Mining Officer) and Mr. Rama Rao (District Forest Officer).

1) Mining of minor minerals: The DMO suggested that all mining activities in Ambagar Chounki (AC) are conducted only after NOC is taken from the concerned panchayats. There is no instance of any operation being conducted without NOC being taken. The ‘mining’ operations are usually excavations of mud for brick kilns, boulders and gravel. Excavations of mud are also considered mining operations in their records, as it is a minor mineral (the law permits the panchayats at the appropriate level to issue NOC only for minor minerals – as mentioned in the report). The money acquired from these operations are first provided to the Zila Panchayat which then distributes it to the lower levels of the hierarchy, the concerned Gram Panchayat (where the activity was undertaken) also getting a share in the monies. A few of these operations are presently in Kunjam Tola (mud for kiln); Hathikanhar Chounki (mud); Keshla (mud); Jithiya (boulders); Brahman Lanjiya (boulders).

Nonetheless, a circumvention is found in that, whenever the mining operation is by the state and NOC is delayed (usually deliberately) by the panchayat, then the state informs that panchayat to decide on granting an NOC within a stipulated time failing which it is assumed that NOC is granted and work is commenced.

2) Control over Minor Forest Produce: The SDO stated that the ownership in minor forest produce is not vested in the tribals! This is blatantly contrary to PESA (section 4), and the state directives (see theory). A Chhattisgarh Minor Forst Produce Trading and Development Cooperative Federation has been formed, under whose supervision trading in minor forest produce is conducted. It is understood that it is this Federation, which has ownership of the minor forest produce! It was also observed that the forest officials are to a large extent ignorant about the requirements of PESA. However, at the village level Prathmik Vanopaj Sahkari Samitis have been formed (which are the real executive bodies), and at the District level a Zila Vanopaj Sahkari Maryadit has been formed. These
organization work in tandem with the federation with regard to ‘notified’ minor forest produce. These two organizations have been registered under the Co-operatives Act. Under the Societies Act, the Van Suraksha Samitis have been formed for dealing with ‘non-notified’ minor forest produce. The Van Suraksha Samitis are formed when more than 50% of the villagers decide to form it.

3) Some of the issues raised by the CEO Janpad (Ambagad Chowki) suggests that there are practical problems in actual implementation of PESA. In AC, PESA did not have much relevance vis-à-vis mining operations in AC since most mining operations (almost all being for brick kiln, or boulders) are conducted in forest areas. Therefore, as per the law, the NOC assumes only notional importance since the final say as to whether mining operations can be conducted in forest areas is with the Central Government and not the panchayats. As long as the area is designated as a forest area – even if lying within a panchayat area – the forest law (The Forest Conservation Act) has superiority over PESA. This is mentioned in PESA as well (see theory of Report).

<table>
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<th>The case of Nagarnar</th>
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<td>After the enforcement of PESA, it is now compulsory for the lease applicants to obtain a NOC from the Gram Sabha. In states like Chattisgarh, where Adivasi women, in thousands, have</td>
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However there is another way in which PESA is being harmed— that being, that Gram Sabhas are not being duly formed since the quorum required under the Adhiniyam (1993) is not being satisfied. The primary reason for the failure being the distance amongst the villages designated as one Gram Panchyat. Hence people are not able to attend the Gram Sabha meetings as per the norms.

In so far as forest produce is concerned, the Gram Panchayats have now been empowered to be the sole issuing authorities for Transit Passes into forest areas – the function having been handed over to them from the forest department. However, the ownership of minor forest produce did not lie with the tribals in reality, though they were permitted to collect tendu pattas after forming societies for that purpose.

4) The interviews with the elected representatives at the GP level suggested that for excavation for brick kilns conducted on private land, the owner of the land is compensated for the operations on his/her land. For the operations on private land, the Panchayat did not interfere. Nevertheless NOC is taken for such activities because irrespective of the fact that the kiln being operated on panchayat or private land it is essential that a NOC be obtained from the panchayat. At times objections are raised against the excavation, but are usually motivated by private interests and not by the panchayat. The compensation provided to the private landowner is not routed back to the Gram Panchayat since the panchayat does not own the land.
valiantly protested against public sector mining projects like the NMDC Steel Plant in Nagarnar, they were brutally suppressed in spite of stark violations of the Land Acquisition procedures and the PESA Act. Here the Gram Sabha was never consulted and there were gross dereliction of duties and procedures by the authorities and the company with regard to obtaining consent and NOC’s from the people. NMDC has denied any of the violations brought out by the National SC/ST Commission in its fact-finding report on Nagarnar. On the other hand, it is forcibly evicting people from their lands and going ahead with the construction by intimidating the women against any democratic agitations. Several women and children were taken into custody for demonstrating against the Plant. In such situations, where is the public accountability towards women in the communities while acquiring lands for mining projects?

Source: Background Paper by Mines, Minerals and People (MMP) for the Indian Women and Mining seminar, Delhi April 2003

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**Tribals vs MNCs?**

The National Mineral Policy does acknowledge that there is a lack of adequate contribution to economic development of the tribals due to mining and admits the need to involve them in mining projects besides giving them the first choice of mining in smaller mines. This, coupled with the Samatha Judgment which directed that only state owned companies or societies of tribals should undertake mining activities in the Scheduled Areas, appear to show a way for reducing the debate over tribal development vis-à-vis privatization, liberalization and divestment in mining.

Yet, the ground realities are that communities are not properly consulted and where they come forward to take up mining on their own, the state machinery, instead of providing an environment of promoting local initiatives, suppresses these by denying leases and frustrating them with intimidating procedures whereas private mining companies, particularly MNC’s get leases with ease. A live example, which stands out in this context, is the Markatola Adivasi Khanij Utkanan Sramik Samiti in Kanker district of Chhattisgarh, which has at least nine Adivasi women as members and has been pursuing for a mining lease since 1995. It has yet to get a prospecting license.

Rights of mining apart, there are instances of fallen promises in land acquisition. In Chhattisgarh some tribal lands in Khudaridih village are being acquired to provide the raw material for BALCO but after the Sterlite takeover, the promises made at the time of acquisition are being bounced between the government and the new private owners, neither of them taking responsibility for proper rehabilitation.

Source: Background Paper by Mines, Minerals and People (MMP) for the Indian Women and Mining seminar, Delhi April 2003
Conclusion

Despite virtuous laws, the PRI system can only be as good as the people who make it function. The schism between the black letters of the law and the implementation of the laws is perhaps a vexed problem that has constantly been of concern. A glaring blot, for instance, is the incidence of allegedly illegal land acquisition by the NMDC Steel Plant in Nagarnar. In that infamous occurrence, the National SC/ST Commission found that the public sector undertaking in connivance with the state administration circumvented the requirement of NOC from the Gram Sabha before acquisition of land for mining. The protest of adivasi women against such action by the plant management was also suppressed. Such incidences do mar claims of establishing a strong ethos for PRIs, often also marked by bureaucratic interference. Our study reveals that while the statutes are impressively oriented towards strengthening the functioning of PRIs, and do not in any manner contradict each other; it is a greater task to make them work. Inherent loopholes that allow for the supremacy of the government in final decision-making also translate into the supremacy of the government in arbitrary decision-making. It is far easier to influence PRIs from the top-down. The only way of countering such ‘hegemony’ would be to empower people at the grass roots to claim what is rightfully theirs. That objective in turn depends on awareness and knowledge of rights. Our study has revealed that in the subject-area the level of awareness and knowledge, and most importantly, the will power to demand protection of these rights is abysmally low. Admittedly, the onus to improve the situation lies in the conjoint functioning of the state, the NGOs/civil society, and the people themselves.