TRIBAL SELF-RULE LAW-IMPLICATIONS OF PANCHAYAT LAWS IN SCHEDULED AREAS OF JHARKHAND

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<table>
<thead>
<tr>
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<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td>CBO</td>
<td>Community based organization</td>
</tr>
<tr>
<td>DPO</td>
<td>District Planning Officer</td>
</tr>
<tr>
<td>DRC</td>
<td>District Resource Centre</td>
</tr>
<tr>
<td>FALG</td>
<td>Federation for Empowerment of Local Government</td>
</tr>
<tr>
<td>FD</td>
<td>Forest Department</td>
</tr>
<tr>
<td>GCC</td>
<td>Girijan Cooperative Corporation</td>
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<tr>
<td>GS</td>
<td>Gram Sabha</td>
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<tr>
<td>GP</td>
<td>Gram Panchayat</td>
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<tr>
<td>JFM</td>
<td>Joint Forest Management</td>
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<tr>
<td>JPRA</td>
<td>Jharkhand Panchayati Raj Act, 2001</td>
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<tr>
<td>MP</td>
<td>Mandal Parishad</td>
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<tr>
<td>MDO</td>
<td>Mandal Development Officer</td>
</tr>
<tr>
<td>MPTC</td>
<td>Mandal Parishad Territorial Council</td>
</tr>
<tr>
<td>MFPs</td>
<td>Minor Forest Produce</td>
</tr>
<tr>
<td>NGOs</td>
<td>Non-Government Organisations</td>
</tr>
<tr>
<td>NTFPs</td>
<td>Non-Timber Forest Produce</td>
</tr>
<tr>
<td>PAL</td>
<td>Panchayat At Appropriate Level</td>
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<tr>
<td>PESA</td>
<td>Panchayat Extension to Scheduled Areas Act, 1996</td>
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<tr>
<td>PRI</td>
<td>Panchayat Raj Institutions</td>
</tr>
<tr>
<td>PTG</td>
<td>Primitive Tribal Groups</td>
</tr>
<tr>
<td>SEC</td>
<td>State Election Commission</td>
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<tr>
<td>SHGs</td>
<td>Self-Help Groups</td>
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<tr>
<td>SERP</td>
<td>Society for Elimination of Rural Poverty</td>
</tr>
<tr>
<td>SCs</td>
<td>Scheduled Castes</td>
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<tr>
<td>STs</td>
<td>Scheduled Tribes</td>
</tr>
<tr>
<td>TSP</td>
<td>Tribal sub-plan</td>
</tr>
<tr>
<td>VAO</td>
<td>Village Administrative Officer</td>
</tr>
<tr>
<td>VP</td>
<td>Village Panchayat</td>
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<tr>
<td>VSS</td>
<td>Van Samrakshan Samities</td>
</tr>
<tr>
<td>WUAs</td>
<td>Water User’s Association</td>
</tr>
<tr>
<td>ZP</td>
<td>Zilla Parishad</td>
</tr>
<tr>
<td>ZPTC</td>
<td>Zilla Parishad Territorial Council</td>
</tr>
</tbody>
</table>
Glossary

Gram Vikas Samiti  A sub-committee of the Gram Sabha, which looks into the planning of the overall development of the village.
Gorait  Village Messanger
Killi  Clan
Manjhi  Head of the village in Santhal areas.
Manki  Head of Inter-Village organizations in Ho areas of Jharkhand
Mahto  Secular Head of the Oraon Village who acts on social issues.
Munda  Traditional headmen of the village.
Mukhiya  President of the Statutory Gram Panchayat
Pramukh  President of the Panchayat Samiti
Pahan  Religious Head of the Oraon village
Parha  Inter-Village Organization in Ho areas
Parha-Raja  Head of Parha Panchayats.
Paragna  Inter-Village Organization in Santhal Paragna.
Pirs  Inter-Village Organizations in Ho areas of Jharkhand
Up-Mukhiya  Vice-President of the Statutory Gram Panchayat.
Up-Pradhan  Vice-President of the Panchayat Samiti
Tribal Self-Rule In Jharkhand: Implications Of Jharkhand Panchayat Raj Adhiniyam, 2001 In Scheduled Areas

1 Introduction:
Within six months of formation of the new State of Jharkhand, Jharkhand Panchayat Raj Adhiniyam, 2001 (Hereinafter 2001 Act) came into being. The Act was enacted to facilitate “local self-governance” through the instruments of Panchayat Raj Institutions, and to give effect to the mandatory provisions of the 73rd Amendment Act, 1992 and the The Provisions of Panchayat Extension to Scheduled Areas Act, 1996 (PESA). It is for this reason that any legal analysis of the 2001 Act should be done on the touchstone of the 73rd Amendment and especially the PESA. The Section below endeavors to carry out such an analysis.

2 Legal Analysis Of 2001 Act And Its Comparison With PESA
One of the most important principle of the 73rd Amendment and the Central PESA, 1996 is vesting of specific powers and functions to the Gram Sabha, enabling it to deal with the economic and social development of the village in congruence with unique identity, culture and traditions of the tribals. In the present section an attempt has been made to critically evaluate Jharkhand PESA, in the backdrop of the basic principles enunciated in the Central PESA 1996, with regard to the empowerment of the Gram Sabha, to see whether the State legislation conforms to the spirit, if not the letter of the Central PESA.

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1 By virtue of the 2001 Act, Bihar Panchayat Raj Adhiniyam, 1947, Bihar Panchayat Samiti and Zila Parishad Adhiniyam, 1961 and Bihar Panchayat Raj Adhiniyam 1993, were repealed to the extent to which they applied to the State of Jharkhand.
3 The Structure of the 2001 Act: Implications for Powers to the Panchayats

Before commenting upon the functions of the Gram Sabha and PAL it is critical to first have a look at the structure of the Act. It is important to clarify this at the outset because there seems to be some confusion amongst the NGOs/CBOs on exactly where the provisions relating to Schedule Areas of the State are located within the 2001 Act.

3.1. Two-Head’ Classification of General and Special Powers

In the State Act the powers and functions of Gram Sabha and PRIs are classified under two heads, firstly the General powers vested with all the Panchayats whether in the Schedule Areas or not, and secondly, Special powers applicable only in the Scheduled Areas. General powers of the Gram Sabha have been made subject to the Rules/orders to be framed by the State Govt. in that respect from time to time\(^2\). However there is no such provision for the additional powers of the gram Sabha in scheduled areas. Similarly the powers of the Panchayats are subject to the conditions to be prescribed by the Govt., however this clause does not qualify the sub-section that contains Panchayat’s additional powers excisable exclusively in scheduled areas. That means in Jharkhand PESA can be implemented the moment there are Gram sabhas and Panchayats to assert their rights. However the Act categorically says that the functions and powers assigned to Gram

\(^2\) Sec 10 (1)
Sabha\(^3\) and Panchayats\(^4\) shall not affect the Acts or Rules enacted by the Govt. Thus in case there is a conflict between the JPRA and any other law, it is the latter that should prevail. It raises doubts on the State’s intention to establish and operationalize local-self governance regime.

3.2. Inter-tier allocation of powers:

The powers among the three tiers of the PRIs are distributed in such a way that all the three tiers have the same power over the same subject matter, especially in respect of additional powers in scheduled areas.\(^5\)

The Central PESA clearly says that “State legislation…. shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or the gram sabha”. The State instead of providing safeguards as required by this provision itself violated it by endowing higher levels of PRIs with powers which should have been vested with the lower tiers of the PRIs. For example all the three tiers of PRIs have the power to manage village markets, which could have been vested at the village level only, there being no need to involve the higher tiers here. Further all the three tiers of PRIs can exercise “control” over local plans including tribal sub-plans. The State needs to frame enabling rules to clarify as to how different tiers of PRIs will exercise control over the same subject matter. Similarly both Panchayat Samiti and Zilla Parishad have the right to own minor water bodies. This again is quite vague. The scheme of inter-tier allocation of powers clearly reflects that the linkages between different tiers of Panchayats haven’t been thought through.

It is interesting to note here that the general powers of all three tiers of PRIs have been made subject to the availability of funds with the respective tiers. The Act does not prescribe as to how different powers of the PRIs shall be accorded priority in case of paucity of funds. That has been left to the discretion of the PRI concerned.\(^7\)

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\(^3\) Sec 10. 5.8  
\(^4\) Sec 75.C, 76 (C), 77 (C)  
\(^5\) Note here that in other State laws the various powers under PESA have been clearly devolved upon specific tiers of Panchayats  
\(^6\) 4 (n)  
\(^7\) Here it is pertinent to mention that in some other states, e.g. Tripura, duties of Panchayats are of two types, mandatory and discretionary
3.3. The Mechanism of Sub-Committees

The 2001 Act provides for the establishment of various sub-committees of Gram Sabha\(^8\), Gram Panchayat\(^9\), Panchayat Samities and Zilla parishad\(^10\). This concept of permanent committees has been borrowed from the MP Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993\(^11\). Before commenting on the system, it is important to first have a look at the nature of committees provided by the JPRA.

The Gram Sabha can establish the following 8 kinds of committees in effective performance of its functions and duties.

![Figure-1. Gram Sabha and its Committees](image)

The Act does not clearly lay down the functions to be performed by these committees. It only talks about the *Gram vikas samiti*, which shall make a plan for overall development of the village and shall present it before the Gram Sabha for approval\(^12\). What happens thereafter is not prescribed in the Act, what happens if the gram Sabha rejects the plan or even if it approves the plan how will the committee implement the same. The Act leaves these questions unanswered. The Act is completely silent as regards other committees. Further it has been left to a “*prescribed authority*” to prescribe the procedure for reservation of posts in such committees, election of chairman,

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\(^8\) Sec 10 (1) (B)
\(^9\) Sec 71
\(^10\) Sec 72.
\(^11\) Act 1 of 1994
\(^12\) Sec 10.1.D
members, eligibility of members and such other details regarding such permanent committees.

As regards the committees of Gram Panchayats, Panchayats Samiti and Zila Parishad, detailed provisions regarding their composition and structure have been provided\(^{13}\), however their functions are yet to be prescribed. Certain committees of Gram Sabha GP, PS, and ZP are similar. For example Development and Health committees find mention in the permanent committees of all four of the above. Similarly all three tiers of PRIs can establish General Administration, Social welfare committees etc. This might create conflict at the local level as there will be number of Committees performing the same functions, and in the event that these Committees are to simultaneously exist how will such committees coordinate each other would need to be spelt out clearly.

4 The provisions of Central PESA and Jharkhand response:

4.1 Fundamental Principles of PESA

At the outset it is important to see the 2001 Act for its definition of a Village, in Scheduled Areas, as village is the basic unit on which the entire formal structure of participatory democracy is built. In tribal areas the villages should be drawn with reference to the community rather than the population, which is the official criteria of defining revenue villages. In this regard the 2001 Act retains both the spirit and the letter of the Central PESA, it provides “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 affairs in accordance with traditions and customs\(^{14}\).” Further Gram Sabha consists of all village adults registered in the voter’s list\(^{15}\). Ordinarily there shall be one Gram Sabha in a village, however in a Scheduled Area, there can be more than one gram Sabhas if the members of the Gram Sabha so desire. More than one gram sabha means that the size of the gram sabha will be smaller. A smaller gram is better placed to perform its assigned functions as it ensures effective participation of all members. However this provision of more than one gram Sabha may create confusion at some places, for example, sec 75 (B) of the 2001 Act vests the gram Sabha with the power to exercise

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\(^{13}\) Sec 71 & 72.

\(^{14}\) Sec 2.ii
control over gram Panchayats. If there are more than one gram Sabha, which one of them shall exercise control over the Village Panchayat is not clear.

In Scheduled Areas the Gram Sabha has been made responsible for safeguarding and preserving the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. Unlike Central PESA the State Act does not use the term “competence”. There is an express mandate on the Gram Sabha to exercise these powers. This power is however subject to the provisions of the constitution. Further the Gram Sabha has been empowered to draft rules in this respect and present them before the Gram Panchayat, PS, ZP and the State Govt. As regards natural resources including land, forest and water, the gram Sabha is being made responsible for their management in accordance with its traditions. This power is however subject to the tenets of the constitution and the Rules, presently in force. Here the guiding test is whether or not, the traditional management practices of the Gram Sabha are in congruence with the spirit of the said constitutional provisions and the Rules. One need not consider the literal or mechanical conformity between the two.

4.2. Specific Powers of Gram Sabha and Panchayat at Appropriated Level:

The Central PESA envisages a specific scheme of distribution of powers vis-a-vis Gram Sabha and the PAL. There are four sets of powers:

- Powers exclusive to Gram Sabha
- Powers exclusive to PAL, they can be assigned to any tier of the Panchayats.
- Powers of Gram Sabha OR PAL, they can be assigned to either the Gram Sabha or any tier of the Panchayats.
- Powers of Gram Sabha AND PAL. This makes the Gram Sabha a necessary unit of empowerment along with any other level of Panchayat.

It is important to see how the State of Jharkhand distributed these powers.

The powers that are exclusive to Gram Sabha as per the Central PESA are presented in the Box-1. In Jharkhand the Gram Sabha is empowered to approve the plans,

15 Sec 3.ii
programmes and projects for the social and economic development of the village\(^{16}\). It can also select the beneficiaries under the poverty alleviation and other programmes\(^{17}\).

\[ \text{BOX-2} \]

\textbf{Powers exclusive to Gram Sabha (as per Central PESA)}
- Approving any plan, project or programme for the development of our village.
- Selecting beneficiaries to be benefited under the poverty alleviation and other programmes.
- Issuing a certificate for the money spent by the Panchayats.

However the Gram Panchayat has also been made responsible for selection of beneficiaries for poverty alleviation programmes with the help of the Gram Sabha\(^{18}\). Thus these two provisions might create conflict between the GS and the GP. Secondly, it does not conform to the Central PESA as this power is envisaged to be exercised by GS only, giving rights over the same matter to GP would be in violation of the Central PESA.

As regards the provision of Utilization Certificate, the GS has the duty to ensure and certify proper utilization of funds by the gram Panchayat for the plans, programmes and projects mentioned in 10 (1) (A) (ii)\(^{19}\), the 2001 Act casts an express duty on the GS to ensure and certify that the Gram Panchayat utilizing the funds allocated to it for social and economic development of the village, properly. However all these powers of the Gram Sabha are subject to the rules to be prescribed by the State from time to time.

Coming to the exclusive powers of the PAL. It is interesting to see here that while the Central PESA assigns the power to plan and manage the minor water bodies to PAL, the Jharkhand legislation even devolves the ownership of the same to the Panchayat Samiti\(^{20}\) and the Zila Parishad\(^{21}\). However it is the State Govt. that will prescribe the area within which this right can be exercised. The Gram Sabha also has the advisory powers in respect of the use and regulation of minor water bodies, it may advise the gram Panchayat on the said matter. \textit{Interestingly the Act does not vest any right over minor water bodies in Gram Panchayat.}

\(^{16}\) 10.1.A.i & ii
\(^{17}\) Sec 10.1.A.vi
\(^{18}\) Sec 75 (15) (ii)
\(^{19}\) Sec 10.1.A (v)
\(^{20}\) Sec 76 (B) (1)
The Central PESA made it obligatory for the State functionaries to consult Gram Sabha or the PAL before granting mining leases for minor minerals in Scheduled Areas. The 2001 doesn’t contain such provision, which means that the mining in such areas is done as per the administrative discretion and the village community can’t exercise any check on the same. Further the provision regarding prior consultation with Gram Sabha or PAL before acquisition of land in scheduled areas for development projects have also been omitted. It is surprising that such an important provision was not incorporated in the 2001 Act, given the history of the State, which has witnessed a large area of land being acquired for various Developmental projects and massive displacements of the people.

(See table -1& 2)

<table>
<thead>
<tr>
<th>Development Project</th>
<th>Land Acquired</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suvarnarekha Project</td>
<td>85,000 acres</td>
</tr>
<tr>
<td>Damodar Valley Corporation</td>
<td>2,88,874 acres</td>
</tr>
<tr>
<td>Bokara Steel Ltd.</td>
<td>34,227 acres</td>
</tr>
</tbody>
</table>

*Source: Anon; 2002; Koel-karo; The Indian People’s Tribunal on Environmental and Human Rights

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Displaced persons (Jharkhand)</th>
</tr>
</thead>
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<tr>
<td>Major Irrigation</td>
<td>16.4 lakhs</td>
</tr>
<tr>
<td>Large Industries</td>
<td>12.5 lakhs</td>
</tr>
<tr>
<td>Mining</td>
<td>25.5 lakhs</td>
</tr>
</tbody>
</table>

*Source: Anon; 2002; Koel-karo; The Indian People’s Tribunal on Environmental and Human Right

Sec 77 (C) (1)
Coming to those powers, which are to be exercised, by both the Gram Sabha and the PAL, the 2001 Act seems incongruent with the mandate of the Central PESA. While power of exercising control over sale and consumption of intoxicants has not provided in the Act, certain important powers have been incorporated but their scope and extent has been reduced. For instance, control over money lending, the only place where the Act talks about money lending is Sec 77.A.xxiii.g, where Zila Parishad has been made responsible for keeping a vigil over the practice of charging excessive interest by moneylenders. While the Central PESA provides for vesting Gram Sabha and PAL with the power of exercising control over money lending, the provision in JPRA is limited in its application. Even this limited power has also been kept away from the Gram Sabha and has been given to the highest tier of the PRI. Similarly, the Central PESA makes it mandatory that GS and PAL shall be vested with ownership rights over MFP, the state Act however, only gives certain rights relating to collection, storage, marketing of the same to all the three tiers of the PRIs.

Further the Act empowers the Zila Parishad to restore unlawfully alienated land of Adivasis\textsuperscript{22}. However the Act does not talk about prevention of alienation of land in scheduled areas. That means the ZP will come into play only when the land has been unlawfully alienated. It does not have power to prevent the same; further the GS has been deprived of this power.

Even where the necessary provisions have been devolved to both the Gram Sabha and the PAL, the linkages between these bodies have not been thought through. For instance the Gram Sabha is vested with power to manage resources and expenses for local plans
including tribal sub-plans. However where the Central PESA gives GS and PAL the power over *control and management* of the local plans including tribal sub plans, the State PESA empowers GS to only *manage* the resources and expenses over the said plans, while *control* over the same has been vested in all the three tiers of Panchayats.

Thus a closer look at the Act would suggest that provisions empowering Gram Sabha has their own fault lines. The 2001 Act empowers the Govt. to take back or add to the powers of GS and PRIs. Giving the Govt. such a huge discretion, without laying any guidelines as to how and when this discretion is to be exercised is not a healthy practice and seems arbitrary and unreasonable.

Besides most of the functions listed in Sec 4.m of the Central PESA, which are to be devolved to both Gram Sabha and the PAL, have been conveniently kept away from the Gram Sabha and are being entrusted to PRIs, e.g., control over institutions and functionaries in all social sectors; rights over minor forest produce; power to prevent alienation of land in the Scheduled Areas etc. Further certain important functions of the GS and PRIs have been made subject to the Rules to be prescribed by the State, which means that such provisions cannot be operationalized till there are enabling rules. Which also means that the State Govt will prescribe the manner in which such functions are to be exercised. Further the State Act says that the all the functions of the GS and PRI shall not effect Govt Acts and Rules and their jurisdiction. Thus the real empowerment of the people has been left to the whims and fancy of the State Govt. On one hand the powers are transferred to the people, and on the other, the people are constrained from exercising such powers. Therefore the Act does not genuinely transfers powers to the lower tiers of governance, though it pretends to do so. Further the way certain provisions of the Central PESA, 1996 have been adopted in the State Act by twisting in the language raises questions on the intention of the State legislature to make self-rule a reality in the tribal areas.

The detailed analysis of the discrepancies between the central and the State enactment has been presented in Annexure-C.

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22 Sec 77 (A) (xxiii) (i)
23 Sec 75 (B) (2), 76 (B) (3), 77(C) (3)

The 2001 Act has some significant provisions empowering the Gram Sabha. For example under the Act the Gram Panchayat has to perform its functions under the general control or direction of the Gram Sabha in the Scheduled Areas. Further the Gram Sabha has been empowered to discuss any of the subject matters coming under the powers of Gram Panchayats and the Gram Panchayat shall implement the suggestions of the Gram Sabha. The gram Sabha can also deliberate upon and give recommendations on the Gram Panchayats’ Annual Budget. The power to approve the developmental projects at the Gram Panchayat Level before their implementation and issuance of Utilization Certificate for the expenditure incurred by the Gram Panchayat on the said projects, not only makes the community aware of the various plans and projects undertaken in the village, but also involves it in the decision making process. This further ensures Gram Sabhas’ overall control over the functions of Gram Panchayat.

However a closer look at the Act would suggest that provisions empowering Gram Sabha has their own fault lines. The 2001 Act empowers the Govt. to take back or add to the powers of GS and PRIs. Giving the Govt. such a huge discretion, without laying any guidelines as to how and when this discretion is to be exercised is not a healthy practice and seems arbitrary and unreasonable.

5 The Conflict Between Jharkhand Panchayati Raj Act, 2001 And The Specific Local Laws:

The 2001 Act which intends to give more autonomy to village level institutions and vests them with significant powers over natural resources is bound to conflict with the other laws governing such resources as such they talk of government’s control over them. Thus it is appropriate to have a look at the various local laws in the State and their conflict with the Panchayat Raj Act, 2001. But any such discussion should be done in the light of the fact that the JPRA doesn’t talk about certain important issues like, minor minerals, intoxicants, land acquisition, money lending etc. Further there is a rider which nullifies the effect of all the powers vested in the Gram Sabha and PRIs, the Act clearly says that it doesn’t effect the Acts /Rules made by the government for the time being in force.

24 Sec 75.B
which means that in case of conflict the other laws shall prevail upon the Panchayati Raj Act, 2001. Some of the specific provisions may be closely seen in this context.

5.1. Minor water bodies:

With respect to minor water bodies in the Scheduled Areas, the State Act gives the powers of ownership, planning and management of the same to the Panchayat Samiti and the Zila Parishad. While the Central Enactment talks only of rights with regard to planning, management and control of the minor water bodies, the JPRA goes further and devolves even the ownership rights to the Panchayats at the block and district level. However the Bihar Irrigation Act, 1997 expressly vests all rights in water of any river, natural stream or natural drainage channel, natural lake or other natural collection of water in the State Govt.

Further all the irrigation works shall also vest in the Govt. The Act gives significant powers over the management and planning of water bodies to the govt officials like, canal officers, Div. Canal Officer and Collector etc. This clearly conflicts with the mandate of PESA, which requires people’s ownership over minor water bodies. The Act also provides for the acquisition of ownership of any existing village channel by any person including water users associations. Further the Govt may transfer any distributory, minor or watercourse to the Water Users Associations. Such Water Users Associations could function as parallel bodies to the formal Panchayats and could create conflicts on the ground.

25 Sec10.5.7  
26 Sec 3  
27 Sec 4  
28 Sec 32  
29 Sec 46  
30 Another Act which vests broad, unchecked powers over the collector is Bihar Emergency Cultivation and Irrigation Act, 1956, whereby he is empowered to order that a certain land shall be irrigated from a particular natural stream, river or chaur or a particular irrigation work. This amounts to encroachment upon the right of PS and ZP over management and control of minor water bodies. Further the Collector can exercise such powers notwithstanding any record-of-rights. The Act nowhere defines the term record-of-rights. It probably means a record containing customary rights of the village community over natural resources. This again conflicts with JPRA, which provides for the gram Sabha to safeguard and preserve the traditions and customs of the people. Thus the power of the collector notwithstanding record-of-rights clearly conflicts with the Gram Sabha’s power to preserve and safeguard the same
5.2. Land Alienation in Scheduled Areas

As regards land alienation the State PESA provides that the Zila Parishad as may be prescribed by the State shall be responsible for restoring the unlawfully alienated land of an Adivasi. By virtue of the Chota Nagpur Tenancy Act, 1908 and Santhal Paraganna Tenancy (Supplementary Provisions) Act, 1949 this power has been vested in the Deputy Commissioner. This discrepancy between the two Acts needs to be resolved.

5.3. Intoxicants:

As per the Central PESA the GS and the PAL can enforce prohibition or regulate or restrict the sale and consumption of any intoxicant. The 2001 Act however doesn’t contain any provision in respect of intoxicants. While the study of subject matter laws dealing with intoxicants reveals that the substantial powers in this respect have been vested in government. The Bihar and Orissa Opium Smoking Act, 1928, provides for the registration of opium smokers and maintenance of a register of opium smokers by an authority to be prescribed by the State. In light of the new 2001 Act should the Gram Sabha or PAL to be the authority responsible for registration of smokers in the Scheduled Areas under the Act? Similarly the Bihar & Orissa Excise Act, 1915, confers all the powers in respect of granting licenses for manufacture, possession and sale of any intoxicants to the collector. Further it is the duty of the state to regulate import, export and transport of the intoxicants in the State. Thus we see that the State officials enjoy the overall control over the sale and consumption of intoxicants. However the Act casts a duty on the Panchayats to give information about the unlicensed manufacture of any

31 As amended by the Bihar Scheduled Areas Regulation, 1969
32 As amended by the Bihar Scheduled Areas Regulation, 1969
33 One way of resolving the conflict as is being done in the State of Rajasthan is to transfer the powers of the Deputy Commissioner to the Zila Parishad where the Power of the tehsildar for summary ejectment of the people who have illegally occupied the land belonging to a tribal, has been transferred to the Panchayat Samiti.
34 A person who is above 25 years of age and who is in a habit of smoking opium. Only a registered person can manufacture, possess or smoke opium in the State.
35 Sec 3 & 4
36 Secs 13-20
37 Sec 9
38 Sec 11
intoxicant, but the action against such erring persons shall be taken by the State officials.

5.4. Minor Forest Produce:

Regarding Minor Forest Produces, the Central PESA provides for “ownership” of MFPs by Gram Sabha and PAL. The State Act in total contravention of this doesn’t talk about the ownership of the same, instead it vests, all three tiers of PRIs with the power to manage, collect, store, market MFPs. Further this function is listed under the general functions of the PRIs, which are subject to conditions prescribed by the State and the funds available with Panchayats. The Bihar Forest Produce (Regulation of Trade) Act, 1984 creates monopoly of the State in the trade of certain forest produce. By virtue of the Act, the State Govt may appoint agents to carry out purchase and trade of forest produce on its behalf. It is pertinent to mention here that the State may appoint the Gram Panchayat as its agent apart from tribal cooperatives like LAMPS (Large Scale Multipurpose Society), Vyapar Mandal or PACS etc. In light of the 2001 Act shouldn’t the Gram Panchayat be appointed as the Agent under the said provision? Further note that No person other than the Govt or its agent shall purchase or transport or import or export the specified forest produce. Thus all the primary collectors who collect the forest produce have to sell it to the Agent of the State, at the depots established by the State that too at the price determined by the latter. In Jharkhand the State Trading Organization, which is the wing of the Forest Department harvests and does marketing of the major forest produces of the State. These provisions are in clear conflict with the 2001 Act as the new Panchayat Raj Act vests the PRIs with the right over marketing and management of MFPs, which the former legislation seeks to regulate by creating state monopoly.

39 Sec 76
40 Sec 4
41 Sec 5
42 Sec 2 (4)
6 Recent Developments Impacting The Spread Of 2001 Act In Schedule Areas

6.1. Amendments in 2003 to the 2001 Act:

The Jharkhand Panchayat Raj (Amendment) Bill, 2003 was passed in the Legislative Assembly on 10th Oct 2003. The Bill seeks to dereserve the posts of Up-Mukhiya in Gram Panchayat, Up-Pradhan in Panchayat Samiti and Vice-Chairman of the Zila Parishad in Scheduled Areas. Notably PESA contains a provision for reservation of the post of Mukhiya (Gram Panchayat), Pramukh in Panchayat Samiti and President of Zila Parishad for Scheduled Tribes. However in 2001 Act not only these posts but also the 2nd level posts, like those of Up-Mukhiya, Up-Pradhan, and Vice Chairman were reserved. This has been a great source of resentment among the non-tribals- an aspect that was repeatedly seen in course of field visits and meeting with local NGOs and leaders.

Another provision that was disputed by the non-tribals was sec 8 (iii) of the 2001 Act, which provides for the Chairman of the Gram Sabha meetings. According to it only a person belonging to a Scheduled Tribe, who, in accordance with the customs and traditions of that area, is recognized as the Gram Pradhan or Manjhi, Munda, Pahan, Mahto or known by any other name, can become the chairman of the Gram Sabha meetings. However in a number of villages the traditional Pradhans are non-tribals. This necessitated an amendment in the Act. The Amendment Bill provides for chairmanship of Gram Sabha by gram pradhan belonging to non-tribals.

6.2. The Elusive Panchayat Elections In Jharkhand:

The last time Panchayat Elections were held in the State of Jharkhand was in 1978, when it was a part of undivided Bihar. After its separation from Bihar, the State passed the Jharkhand Panchayat Raj Act, in 2001 and has been announcing elections since then but hasn’t yet conducted them. This is a clear violation of the Constitution of India. ⁴³

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⁴³ Art 243 E: The Article says that there shall be Panchayats at the village, intermediate and district levels and that:
i) every Panchayat shall continue for five years from the date appointed for its meeting and no longer and
ii) election to constitute a Panchayat shall be completed before the expiry of its five year duration or within six months of its dissolution.
A number of writ petitions have been filed in the Jharkhand High Court demanding for the Panchayat elections in the State. While hearing one of such petitions the Jharkhand High Court directed the State Govt. to hold Panchayat elections by 31st March 2004.

The State Govt. has been delaying the elections in the guise of issues like delimitation of constituencies, reservation, revision of voter’s list, rain, drought and even festivals. The problem that the State Election Commissioner (SEC) was facing earlier was non-publication of the Census Report of 2001. The preparation of Voter’s list, re-demarcation of Panchayats was awaiting the publication of the Report. The same has however been published in February 2004. Further the elections were postponed in view of the ensuing Lok Sabha elections.

The non-existence of formal Panchayats in the State has resulted in unchecked interference of the state machinery in the developmental activities in the rural areas. It has also meant that Institutions at village level at the behest of NGOs have sprung up which cannot be put into the policy and legal map of the State. Note here that during the financial year of 2002-03, Rs 1,395 crore was allocated for Rural Development Department. Jharkhand has 3,765 Panchayats and 32,615 villages. If half of this amount and the amount allocated to government departments such as agriculture, co-operatives, water resources, land reform and social welfare had been routed to the Panchayats, each Panchayat would have had as its share nearly Rs 60 lakh.

6.3. High Court Cases on the 2001 Act with special reference to Provision for Reservation

Within three years of coming into force, a number of Petitions have been filed in the Jharkhand High court against the 2001 Act. Apart from Petitions on conduct of elections, the provision of reservations in Schedule Areas has been challenged in the Ranchi High Court. The Act provides for upto 80% reservation in the Scheduled areas and 50% in non-scheduled areas. However over the years the tribal population in various parts of the Scheduled areas has declined. There are many blocks in the Scheduled Areas where tribal

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44 Filed by Munda R. Mahto, S Munda and D. Mahto
45 In an earlier hearing of the same petition the court had asked the State Govt. and the SEC to declare the election Schedule by 18th September 2003, which the Govt. failed to do.
46 Panchayat Raj Update, Vol-XI, January 2004, Institute of Social Sciences
47 Bhaskar Sandeep; 4th May, 2003, Deccan Herald
population is less than 50%. In one of the writ petitions\textsuperscript{48} inclusion of “Saraikela Kharswana” in the Scheduled areas was challenged on the ground that as the non-tribal population in the said area is more than 80%, thus reservation under the 2001 Act completely violates the democratic rights of the people. Similarly in South Sahebgunj, inclusion of six tribals in the voter’s list, alleged to be belonging to another Panchayat circle of Sahebgunj was challenged\textsuperscript{49} as due to their inclusion the said area would not be exempted under the reservation policy. Further in the Act even the second posts like up-mukhiya, up-pramukh and vice-chairman have been reserved for the Scheduled Tribes. While the Central PESA provides for the reservation of first level posts only, the State Act goes one step ahead and reserves both the first and second level posts for Scheduled tribes. This caused a lot of resentment in non-tribals. A large number of petitions filed against the JPRA have attacked this unwarranted reservation policy of the State\textsuperscript{50}.

The point that these petitions have raised is especially important for Jharkahand where there are many blocks in Schedule area where the tribal population is even 25% or less. Some of the blocks where there is such a critical position include-Balumath in Latehar District, Ichagarh in Saraikela District, Saraiya in Dumka, Silli in Ranchi and Barhwa, Sahebgunj and Rajmahal in Sahebgunj District. Significantly the Patna High Court in a judgement delivered in 1996 - and which was applicable in all the areas of the present day Jharkhand - had held that the post of mukhia of Panchayats, pramukh of Block samitis and adhyakshya of Zila parishads, being solitary posts cannot be reserved as it would amount to hundred percent reservations.\textsuperscript{51} Recently the Calcutta High Court has also struck down reservation of offices of Panchayat chairpersons as unconstitutional on the ground that “if there is any conflict between the rule of majority and the rule of reservation, the rule of majority will prevail because the same is very foundation of the Indian democracy” The logic in these cases could apply in Jharkhand too and one feels that the Ranchi High Court would have to soon take a position on the issue.

An important issue in the State is the perceived inconsistency between the Act and the traditional governance system in the villages, which has been in existence from the time

\textsuperscript{48} WP (2) 2097/02
\textsuperscript{49} WP (S) 6860/02
\textsuperscript{50} WP (PIL) 84/2002, WP (PIL) 915/02, WP (PIL) 1585/02
\textsuperscript{51} As quoted in Panchayti Raj Update, March 2004
immemorial and Petitions filed by Organizations like JOHAR in Chaibasa and SAATHI in Dumka raise this issue which has been discussed further in a later section.

6.4. The Jharkhand Vision 2010 Document

The Jharkhand Government has issued an ambitious policy statement called VISION 2010. The Policy has place for the welfare of the primitive tribals of the State. “Sustainable socio-economic development of the major and primitive tribal groups (PTG) as well of scheduled castes and other backward classes” has been recognized as an objective under the Policy. The state through this Policy document identifies the basic problems of tribals as: indebtedness, land alienation, shifting cultivation, poverty, drinking water, communication, displacement and migration. The proposed strategy focuses on the following spheres of the tribal development:

- Making tribals and scheduled castes free from indebtedness/ moneylenders.
- Strictly enforcing the laws for the protection of scheduled castes and tribes.
- Spreading awareness in the community.

There are enabling provisions under the 2001 Act that could address atleast part of the problems identified by the Vision 2010 document -all the more reason that these provision be taken to the ground as early as possible.

7 Traditional Governance System Of Tribals –Its Implications:

The 2001 Act can potentially bring about significant changes in the traditional village administration system existing in the tribal areas of the State. This is the reason why the ‘imposition’ of statutory PRIs in the tribal regions seems to have been opposed by certain sections of the tribal communities, especially by the traditional leaders (whose positions were hereditary) as being violative of their customary practices. As pointed out above there are petitions pending in the Ranchi High Court raising these issues. Thus any study on Panchayat Raj Act in Jharkhand can’t be complete without capturing this conflict between the traditional and the modern system.
7.1. Systems of Local Governance:

Basically four forms of Panchayat system existed in different tribal regions of Jharkhand\textsuperscript{52}.

- **Munda-Manki system in Ho areas.**
- **Parha system in Oraon villages.**
- **Munda-Manki system in Khuntkatti Munda dominated areas.**
- **Manjhi Pradhan system in Santhal.**\textsuperscript{53}

**Munda-Manki System (Ho):**

The Munda-Manki system normally three level organizations were prevalent, the first level organization at the lineage level, second at the village level and the third at the inter-village level. However in some areas inter-village organizations are weak In Ho areas Mundas are the headman of the village and are subject to the authority of Mankis, who are the head of inter-village Panchayats (known as Pir). The post of Mundas is hereditary. Some of the Pir are larger so these are divided into a number of sub-divisions each presided over by a Manki. The British vested these Mundas with the power of collecting revenue and taxes.

**Parha System**

There are two types of village heads in an Oraon village, one is secular head, known as Mahto, who acts on social issues and the other is religious and sacred head, known as Pahan, who looks into religious matters. The villagers elect the Mahto once every three years. He presides over the village council. The inter-village organization of the regional Panchayat is known as Parha. The head of the Parha is called Parha-Raja. The no of villages in different Parha organizations vary from region to region.\textsuperscript{54} In Biridh village of the region the forest community protects and regulates forests. The village head grants permission for the extraction of timber from the forests as per the household needs and

\textsuperscript{52} Sharan Ramesh et.al; unknown; Participatory development & Traditional Democratic Institution; Pearl Shranjivi Unnayan, Ranchi

\textsuperscript{53} Anon; Participatory Development & Traditional Democratic Institution; Pearl Shramjivi Unnayan, Ranchi

\textsuperscript{54} As per the study conducted by the PEARL, Shramjivi Unnayan, Ranchi, In the Bero region of Ranchi District there are Parha Panchayats consisting of 8, 10, 12 and 21 villages, popularly known as 8 Parha, 10 Parha, 12 Parha and 21 Parha. All the Parhas together are called 51 Parha.
making of agricultural tools. The Village community doesn’t have any confrontation with the FD Personnel\textsuperscript{55}.

\textbf{Munda-Manki System (Mundari)}

At the lineage level the elder or the lineage head, leads the own lineage people, whereas village head is the \textit{Munda}. There are two types of inter-village organizations known as \textit{Parha} and \textit{Patti} as political and social organizations respectively. The \textit{Khunkhatti} area is divided into circles called \textit{Pattis}. A \textit{Patti} is a group of villages, generally at least ten or twelve. The Head of \textit{Patti} is called \textit{Manki}. The \textit{Patti} organization is again of two types, \textit{Bhainhri}\textsuperscript{56} \textit{Pattis} and \textit{Khuntkhatti Pattis}. While \textit{Patti} organization is territorial, \textit{Parha} is based chiefly on the \textit{Killi}, i.e., clan. The \textit{Patti} organization has jurisdiction on every individual falling under its territorial jurisdiction whatever be his or her clan, while \textit{Parha} has jurisdiction over every individual of the clan no matter where he be territorially. Thus there is inherent contradiction in this system; an individual will have two heads, one clan head, \textit{Parha} and one \textit{Manki}, \textit{Patti} head.

\textbf{Manjhi-Paragnati System:}

This is prevalent among \textit{Santhal} tribes. The \textit{Manjhi} is the head of the village. Earlier the village people elected him but now his post has become hereditary. He heads the village council and looks after all internal and external matters of the village. The \textit{Manjhi} has two assistants, \textit{Paramanik} and \textit{Jog-Manjhi}. There is a village messenger known as \textit{Gorait}. The inter-village Panchayat is known as \textit{Paragna Panchayat} headed by a \textit{Paragnait}. His assistant is called \textit{Desh-Manjhi}.

The traditional Panchayats or Gram Sabha performed wide range of functions concerning both the internal and external matters of the village including:\textsuperscript{57}

(a) Village welfare and community development;
(b) Controlling land, water and forests.
(c) Resolving all sorts of disputes;
(d) Preserving the cultural traditions;

\textsuperscript{55} Anon; Participatory Development and Traditional Democratic Institutions; PEARL, Shramjivi Unnayan, Ranchi
\textsuperscript{56} Decedents of the first original founders of villages in Chotonagpur.
\textsuperscript{57} Sharan Ramesh et.al; unknown; Participatory development & Traditional Democratic Institution; Pearl Shranjivi Unnayan, Ranchi
(e) Sending unsettled cases to the inter-village organizations, the highest body.

7.2. Provisions under SPT (Supplementary Provisions) Act, 1908 and Chota Nagpur Tenancy Act, 1908:

After understanding the various traditional governance systems, it is pertinent to discuss the provisions in the old Acts like CNTA and SPTA to see the legal position with regard to the traditional leaders. The Santhal Paragana Tenancy Act, 1908 provides for the appointment of village headmen. "Village headmen" as per the said Act means "the person appointed or recognised whether before or after the commencement of this Act by the deputy Commissioner or other duly authorized officer to hold the office of a village headmen whether known as Pradhan, mastajur, manjhior otherwise, but does not include a mulraiya". As per the rules enacted under the Act, the appointments of headmen shall be in accordance with the village customs, further he shall be generally acceptable to the raiyats. Further it has also been recognised that the office of the village headmen shall be hereditary. The village headmen are granted a patta and are required to execute a kabuliyat. They discharge their duties as per the patta, kabuliyat as also by the record of rights. They are recognised as the true custodians of the common rights of the village community. The rights and duties of the Pradhan are enumerated in the record of rights prepared during the settlement operations and these include performing the police duties, collection and payment of rent, assisting raiyats in repairing dams, dykes, tanks belonging to the raiyats, preserving the camping and grazing grounds etc. Such provisions can have larger implications in fuelling the conflicts between the traditional leaders and elected Panchayat heads. In this context it is noteworthy that Section 4.5 of the Rules provides: "where a Gram Panchayat has been established under the Bihar Panchayat Raj Act, 1948, the headmen shall give his full co-operation towards successful working of the Panchayat."

Similarly CNTA provides that the rights and obligations of village headmen are part of the record of rights. These headmen are variously known as Pradhans, Manjhis, Mandalas, etc.

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58 Schedule V, SPT (supplementary) rules, 1950.
59 Prasad Mohan; 2002; Santhal Paragnas Tenancy Manual; Malhotra Bros, Patna
60 The state government is obliged to prepare such record of rights under Chapter XV, Sec 127 of the CNTA.
It is important at this point to look into greater detail the rights and duties of the traditional leaders under various settlement operations carried out in the state of Bihar (before creation of Jharkhand). This could help identify the specific areas of conflicts between the Traditional governance system and modern Panchayat system.

7.3. **Pointers for More Discussion: Modern Panchayats V. Traditional Governance**

Certain important points that flow from the discussion on the traditional Systems of local governance are:

- In most cases except for a few exceptions like Parha system, the posts of the village heads were hereditary. Thus they belong to a particular clan. In the modern Panchayat System the people directly elect the Panchayat functionaries and this is seen to be more progressive while also standing the test of the Constitution of India. However it was pointed out that there are progressive elements (like rotational one year appointments in the annual Meghpuja) even within the traditional system!

- The women were seldom involved in the decision-making process under the traditional system. In most cases women can’t head the village or inter-village organizations. While the PESA provides for reservation of seats for women at different tiers of PRIs.

- The traditional system seems to be basically operating at two levels, village and inter-village. While the modern system talks of three-tier structure, village, block and district level.

- As even in the traditional System the posts of the village heads were hereditary, and divisions were made only on the basis of clans, the non-tribals were being excluded from holding the offices. This appears to an important point in the context of the raging controversy over the reservation of seats in the Schedule Areas of the State.

8 **More Insights From The Field**

A couple of days were spent in the Dumka Office of the Jharkhand Resource Centre (JRC) discussing the implications of the 2001 Act in the State of Jharkhand. A meeting
was organized here where the representatives of local voluntary organizations like the Manav Kalyan Kendra, MANAVI, Jagriti Manch and Friends For Tribal people were all present. Well known local Advocates in Dumka and also in Godda, apart from some Advocates in Ranchi, were also consulted. To ascertain more opinions of the people on the new Panchayat legislation a larger meeting was also organized in Deoghar were representatives from organizations like the VIKALP, Young Action for Mass, Chetna Manch, Avantika, Bharitya Manv Vikas Sewa Sansathan, NEEDS, PRAYAS and Indian Rural Association were present.

On the scope, applicability and relevance of the 2001 Act people seem to be having different perceptions. While almost everyone seem to have strong views on the Panchayat elections and the significance of local self-governance, the understanding of what is precisely prescribed in the law itself was not clear to most. It was emphasized that the 2001 Act was a top-down law and may not represent the aspirations of the tribal people themselves on the ground. To them this was reflected by the fact that the demands for elections have never come from the people within the Scheduled Areas itself. Besides a lot of discussion tends to center around the merits and demerits of the traditional Systems of Governance and its compatibility with the modern legal framework. (The exact pointers in the debate have been presented above).

However there seem to be a unanimous view on the imperative need for the empowerment of the Gram Sabha itself. It was emphasized that this is something that need not wait for the Panchayat elections. The JRC in fact suggested that there is a need to mobilize public opinion in the State to press for elections as early as possible and the specific problems that might emerge on the administration of the Act can be addressed once the Panchayat bodies are in place. (See above for the cases pending in the High Court in Ranchi arguing both for and against the Panchayat elections.) Organizations like SAATHI in Godda feel that it is difficult to move ahead unless the compatibility of the Santhal Pargana Tenancy Act with the 2001 Act is precisely ascertained. Some local Advocates that have petitioned against the 2001 Act also seem to be taking a view that while the Central PESA was a good legislation its adoption by the 2001 Act leaves a lot to be desired.
8.1. Recommendations in Law

A legal analysis of the 2001 Act, Recent developments in the State together with the voices from the field suggest the following critical recommendations in law for greater applicability of the Jharkhand Panchayat Raj Adhiniyam 2001 in the State:

- There is a need to closely examine some specific and unique legislation in Jharkhand like the Santhal Pargana Tenancy Act and the Chota Nagpur Tenancy Act for their compatibility with the Jharkhand Panchayat Raj Adhiniyam 2001.

- The debate on Modern Panchyat System versus the traditional Systems of Governance is being done more with passion than reason today. There is a need to intensively examine the issue drawing upon both authentic secondary literature and ground based village level studies. (Some pointers for discussion have been enumerated above, see 5.2)

- There is a need to do lot of capacity building of the people in terms of making them aware of their rights. The strategy of legal literacy camps should be employed focusing on the Gram Sabha – plainly the collectivity of village adults and not an institution dependent on the elusive Panchyat elections – to educate them on the rights they already have under the formal laws.
ANNEXURES
### Annexure -A

#### Comparative Overview Of Panchayats (Extension To Scheduled Areas) Act And Jharkhand Panchayat Raj Act, 2001*

<table>
<thead>
<tr>
<th>Section No.</th>
<th>Central PESA</th>
<th>Section No.</th>
<th>JPRA, 2001</th>
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<tbody>
<tr>
<td>4 (a)</td>
<td>State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources</td>
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<td>..........</td>
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<td>4 (b)</td>
<td>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 affairs in accordance with traditions and customs;</td>
<td>2 (ii)</td>
<td>Any village in a Scheduled area that ordinarily consists 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;</td>
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<tr>
<td>4 (c)</td>
<td>Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;</td>
<td>3 (iii)</td>
<td>Gram Sabha consists of persons whose names are included in the electoral rolls for the Panchayat at the village level. Ordinarily there shall be one Gram Sabha in a village, however in a Scheduled Area, there can be more than one gram Sabha if the members of the Gram Sabha so desire, and in every Gram Sabha area the 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</td>
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<tr>
<td>4 (d)</td>
<td>Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution:</td>
<td>10. 5. i</td>
<td>Gram Sabha shall safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution, which are not in conflict with the tenets of constitution. As and when required it shall also present Rules in this respect before the Gram Panchayat, PS, ZP and the State Govt.</td>
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<tr>
<td>4. (e)</td>
<td>every Gram Sabha shall —</td>
<td>10.1.A</td>
<td>Subject to such special or ordinary</td>
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| (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; | orders as may be issued by the State government from time to time, the gram sabha shall perform the following functions:
(i) “identification” of programmes for economic development and formulation of guidelines for determining priority for such plans.
(ii) to approve the plans for economic and social development, which includes all the annual plans at the Panchayat level, before such programmes and policies are implemented.\(^{61}\) |
| 4 (e) | every Gram Sabha shall be--
(ii) responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes; | 10.1.A Subject to such special or ordinary orders as may be issued by the State government from time to time, the gram sabha shall perform the following functions:
(vi) to identify and select persons as beneficiaries under the poverty alleviation and other programmes |
| 4 (f) | 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); | 10.1.A (v) Subject to such special or ordinary orders as may be issued by the State government from time to time, the gram sabha shall perform the following functions
(v) to ensure & certify proper utilization of funds by the gram Panchayat for the plans, programmes and projects mentioned in 10 (1) (A) (ii)\(^{62}\). |
| G.S. or PAL | No such division under JPRA, 2001 | |
| 4 (i) | (i) the gram sabha or the Panchayats at the appropriate level shall be **consulted** before making the acquisition of land in the | No such provision under JPRA, 2001. |

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\(^{61}\) Sec 10.1.A (ii)

\(^{62}\) Sec 10.1.A (v)
<table>
<thead>
<tr>
<th><strong>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;</strong></th>
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<tr>
<td><strong>4 (k)</strong></td>
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<td><strong>4 (l)</strong></td>
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<td><strong>PAL Only</strong></td>
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<tr>
<td><strong>GS and PAL</strong></td>
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“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 Jharkhand PRA, 2001, does not contain this provision. However whether the State Act follows this in practice is a matter of inquiry.

| 4 m (i) | the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant; | 75.A (8) | Subject to the rules as may be prescribed by the State from time to time and availability of funds, the Gram Panchayat shall perform the following functions:

Subject to the rules as may be prescribed by the State from time to time and availability of funds, the Panchayat Samiti shall perform the following functions:

(d) Collection, storage and marketing of minor forest produce and its supervision.


| 4. m. (ii) | the ownership of minor forest produce; | 76 (A) (viii) (d) | Subject to the rules as may be prescribed by the State from time to time and availability of funds, the Zilla Parishad shall perform the following functions:

(d) Consolidated management of MFPs.

| 4. m. (iii) | 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; | 77 A. (vii) (d) | Subject to the rules as may be prescribed by the State from time to time and availability of funds, the Zilla Parishad shall perform the following functions:

(i) to restore the unlawfully alienated land of an adivasi.

| 4. m (iv) | the power to manage village markets by whatever name called; | 77 (A) (xxiii) (i) | Subject to the rules as may be prescribed by the State from time to time and availability of funds, the Zilla Parishad shall perform the following functions:

(i) to restore the unlawfully alienated land of an adivasi.

The powers and functions of Gram Sabha in Scheduled Areas:
(v) management of village markets including animal fairs, through gram Panchayat.
### Tribal Self-Rule Law - Implications Of Panchayat Laws In Scheduled Areas of Jharkhand

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*This is not an official English version of the JPRA, 2001. The Authors themselves translated the Hindi version of the Act for the present study.*
Annexure -B

List of laws referred

**Jharkhand:**

Panchayats:

1. Jharkhand Panchayat Raj Adhiniyam 2001
2. The Bihar Scheduled Areas Regulation, 1969

Scheduled Areas

1. The Scheduled Areas (States of Bihar, Gujarat, MP and Orissa) Order, 1977
2. The Bihar Scheduled Areas (Amendment) Regulation, 1981
3. The Bihar Scheduled Areas (Amendment) Regulation, 1985

Forests:

1. Bihar Private Forests Act, 1947
3. Bihar Kendu Leaves (Control of Trade) Act, 1973
4. Notification under Bihar Kendu Leaves (Control of Trade) Act, 1973
5. Bihar Forest Produce (Regulation of Trade) Act, 1984,
6. Notification under Bihar Forest Produce (Regulation of Trade) Act, 198
7. Bihar Forest Produce (Regulation of Trade) Rules, 1993

Excise:

1. Bihar and Orissa Opium Smoking Act, 1928,
2. Bihar & Orissa Excise Act, 1915

Water bodies:

1. Bihar Irrigation Act, 1997
2. Bihar Emergency Cultivation and Irrigation Act, 1956

**Land**

1. Bihar Land Reforms Act, 1950
2. Chota Nagpur Tenancy Act, 1908
4. Area Autonomous Council (Amendment) Act, 1994