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P R I A

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## HIMACHAL PRADESH PANCHAYATI RAJ (SECOND AMENDMENT) ACT, 1997

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TRIBAL SELF RULE LAW IN HIMACHAL PRADESH

Introduction

The 1990s witnessed a committed effort by the Government of India to decentralize governance through empowerment at the village level. As a first step towards representative and participatory democracy, a three tier Panchayati Raj System was granted constitutional status through the 73rd Amendment Act, 1992, which came into force on 24th April 1993. This Act directed the State legislatures to form laws that not only enabled the establishment of Panchayats, but also vested in them such power and authority as was necessary to make them institutions of self-government. The provisions of the Act however, did not extend to those tribal areas mentioned in the fifth schedule of the Constitution (hereafter referred to as Scheduled Areas). The system of Panchayats was extended to these Scheduled Areas through the enactment of the Panchayat (Extension to Scheduled Areas) Act on 24th December 1996 (PESA).

Box 1.1 What is the Constitution?

The Constitution of India came into force on 26th January 1950. This Constitution is the foundational law of our nation. All other laws and the executive acts of the State draw their validity and legitimacy from the constitution.

1 73rd Amendment Act- This means that the Constitution of India has been amended (changed) 73 times. An amendment to the Constitution is done whenever the Government of India feels that an issue has to receive a nation wide acceptance. An Amendment of the Constitution may be initiated only by the introduction of bill for the purpose in either House by majority (i.e. more than 50%) of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. It shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended. Therefore through the 73rd Amendment Part IX was inserted in the Constitution, which for the first time accepted that Local Self Government in the form of Panchayat Raj Institutions has been made the law of the land.
**Part I: What is PESA**

**1.1 PESA - the law**

PESA is a simple yet comprehensive and powerful law that empowers villages of the Scheduled Areas to address the issues that emerge in their daily lives. This Act extends the Part IX of the Constitution relating to Panchayats to Scheduled Areas. This means that through the PESA, the system of Panchayats has been extended to the Scheduled Areas in general however, it would be subject to the exceptions and modifications that are mentioned in the Act.

**1.2 Applicability of PESA**

The PESA is applicable to all the Scheduled Areas of the nine states mentioned in Box 1.2. To give effect to the provisions of Act, the state legislatures were required to form laws for the scheduled areas of their respective states, in keeping with the Central PESA. There are two important things to bear in mind here; one that scheduled areas may be the entire district or blocks within a district and also Panchayats or villages within blocks. Second, the States are required to amend their respective Panchayat Laws or Subject matter laws or both to bring it in line with PESA.

**1.3 Significance of PESA**

The primary objective of decentralised governance is to give the village people the power to govern themselves. Such decentralization requires an institutional structure, as well as an allocation of powers and responsibilities within this structure. The PESA therefore recognises the village community as the basic unit of governance and prescribes the creation of Panchayati Raj Institutions at different levels. At the village level, it prescribes the recognition of the Gram Sabha or the Village Assembly. This Gram Sabha elects the Gram Panchayat, which is the body of elected representatives of the Gram Sabha. At the block level, it mandates the creation of the Panchayat Samiti and at the district level, that of the Zilla Parishad. The Gram Panchayat, the Panchayat Samiti and the Zilla Parishad are collectively called the Panchayat at Appropriate Level (hereafter PAL).

**Box 1.2 The Scheduled Areas**

Scheduled areas are so called because they have been listed under the fifth schedule of Article 244 (1) of the Constitution. Historically these scheduled and tribal areas were excluded from the normal operation of ordinary law to preserve the social customs & to safeguard the traditional vocations of the tribals living in those areas. Nine states in the country today, have Scheduled Areas. These are Andhra Pradesh, Himachal Pradesh, Orrisa, Jharkhand, Gujrat, Rajasthan, Maharashtra, M.P. and Chattisgarh. Scheduled areas may be the entire district, or blocks within a district or Panchayats or villages within blocks.
The PESA, further, empowers the village community for planning village development, managing natural resources and resolving conflict in accordance with traditional customs and practices. Such empowerment is through the Panchayati Raj Institutions mentioned above.

PESA tries to empower the Panchayati Raj Institutions through six basic methods.

I) By recognising the central role of customary laws, social and religious practices and traditional management practices of community resources in the lives of the tribals and making these the founding principle of self-governance in Scheduled Areas. This principle is also reflected in the definition of village itself. The act defines a village as consisting of ‘a habitation (group of habitations), hamlet (group of hamlets) comprising a community and managing its affairs in accordance with traditions and customs.’ The Gram Sabha has also been envisaged for such tradition-based villages and not for the existing villages, which are revenue villages notified by the Governor. Further, the PESA accepts the **competence of Gram Sabha** in safeguarding and

<table>
<thead>
<tr>
<th>The founding principles of self – governance in Scheduled Areas</th>
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<tr>
<td>(i) customary laws, social and religious practices and traditional management practices of community resources play a central role in the lives of the tribals.</td>
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<td>(ii) the Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution.</td>
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<tr>
<th>Powers exclusive to the Gram Sabha</th>
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<td>(i) the power of approval of the developmental plans, programmes and projects for social and economic development,</td>
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<td>(ii) the power of identifying and selecting beneficiaries for poverty alleviation and other programmes and the power for granting of certificate of utilisation of funds or plans or programmes and projects that are</td>
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<th>Power exclusive to the PAL</th>
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<td>Power for planning and management of Minor Water Bodies</td>
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<th>Powers to Gram Sabha or PAL</th>
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<td>(i) consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects</td>
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<tr>
<td>(ii) prior recommendation in granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.</td>
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<td>(i) enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants</td>
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<tr>
<td>(ii) ownership of minor forest produce prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe</td>
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<tr>
<td>(iii) control over institutions and functionaries in all social sectors</td>
</tr>
<tr>
<td>(iv) management of village market</td>
</tr>
<tr>
<td>(v) control over Money Lending</td>
</tr>
<tr>
<td>(vi) control over local plans and resources for such plans including tribal sub-plans</td>
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preserving traditions and customs of the people, their cultural identity, community resources, and customary mode of dispute resolution. Accordingly, the Act dictates that all state legislation on Panchayats must be in accordance with the customary laws, social and religious practices and traditional practices for management of community resources.

B) By according some powers exclusively to the Gram Sabha. These powers include the power of approval of the developmental plans, programmes and projects for social and economic development, the power of identifying and selecting beneficiaries for poverty alleviation and other programmes and the power for granting of certificate of utilisation of funds or plans programmes and projects that are implemented by the Gram Panchayat.

C) By giving the Panchayat at appropriate level the exclusive power for planning and management of Minor Water Bodies.

D) By empowering the Gram Sabha or the PAL for consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects, and for prior recommendation in granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.

E) By empowering the Gram Sabha and the PAL through powers that are perhaps the most important for the lives of the tribals. These powers make the Gram Sabha a necessary unit of empowerment along with any other level of Panchayat and include enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants; ownership of minor forest produce; prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe; control over institutions and functionaries in all social sectors; management of village market; control over Money Lending and also control over local plans and resources for such plans including tribal sub-plans.

F) By necessitating proportional representation and reservations for Scheduled Tribe members. Proportional representation means that if the scheduled tribe population in a
village is 80% of the total population, then in the Gram Panchayat, 80% of the members must be from the Scheduled tribes. Moreover, for facilitating local leadership from the tribal community, the posts of Sarpanch and Up-sarpanch in the Scheduled Areas are reserved for members of the Scheduled tribes.
Part II: PESA for Us

2.1 Applicability of PESA in Himachal Pradesh

The provisions of PESA were operationalized in 1998 when Himachal Pradesh Panchayati Raj (Second Amendment) Act, 1997 was passed. The Act extended the provisions of Himachal Pradesh Panchayati Raj Act, 1994 to Scheduled Areas of the State with certain modifications. The details of the Scheduled Areas in Himachal Pradesh are presented in Box No.2.1. Let’s call this new law on Tribal Self-Rule Law, Himachal PESA.

2.2 We, The People

The Himachal PESA seeks to empower us, together comprising the village assembly, by giving us rights over issues that affect our lives and involving us in the decision making process. Our Gram Sabha consists of all of us who are either qualified to be registered in the Legislative Assembly rolls or who are already enrolled therein or who are ordinary residents within the Gram Sabha. The first step in the establishment of our Gram Sabha is the declaration of the Sabha Area. The Government has to declare any village or group of neighboring villages, with a population ranging between 1000 to 5000 to constitute “Sabha Area”, however in Scheduled Areas a village with a population of less than 1000, can be declared as “Sabha Area”. A Village ordinarily consists of a habitation (s) or a hamlet (s), thereof comprising a community or communities and managing their affairs in accordance with their traditions and customs. Thus villages are defined on Community lines and not on the basis of Government’s revenue records. It is very important because we have our own unique way of defining villages, it has been elaborated in figure 2.1.

Our Traditional Village

Our traditions and customs were transmitted from one generation to another, orally. We did not maintain written documents on these. Yet we are well versed with these traditions and customs, and now our villages can be defined according to them. (Figure 2.1).

Box 2.1 Scheduled Areas in Himachal Pradesh

<table>
<thead>
<tr>
<th>District</th>
<th>Blocks</th>
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<tbody>
<tr>
<td>Chamba:</td>
<td>Brahmapur and Pangi</td>
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<tr>
<td>Kinnaur:</td>
<td>Kalpa, Nachar and Poo (Entire</td>
</tr>
<tr>
<td>District)</td>
<td></td>
</tr>
<tr>
<td>Lahaul &amp; Spiti:</td>
<td>Lahaul &amp; Spiti (Entire District)</td>
</tr>
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Fig. 2.2 Structure of Panchayti Raj Institutions

Zila Panchayat at the District Level
Panchayat samiti at the Block Level
Gram Panchayat at the Village Level

The Gram Sabha or Village Assembly is the foundation for Panchayati Raj

After the Sabha Area has been declared the Government has to establish the Gram Sabha by an order. Here it is important for us to know that in other States there is no provision for Government’s order for establishment of Gram Sabha. The Gram Sabha already exists in all the villages, the Central PESA only gives recognition to such a body and does not talk about State’s role in establishing the same.

Apart from this it also envisages a three tier Panchayat Raj structure at the village, block and the district level. (Please see figure 2.2)

In consonance with the basic principles of the Central PESA, our State has now statutorily recognized that the Gram Sabha is competent to take measures to safeguard & preserve:

Fig. 2.1 Defining our Village

A, B, C, D and E were five tolas in a Scheduled Area, all belonging to the same tribe. Though they were separated by a road, and had different wells and handpumps, forest and grazing lands, these Tolas decided to form one village. These tolas believe that they have all descended from the same ancestors. They worship the same Devi, they follow the same customs, and they have traditionally lived as one village. They always celebrated their festivals together and have a common Mela. Residents from these tolas participate in the ceremonies associated with birth, marriage, and death in whichever tola. customs, and have traditionally lived as one. Even their disputes are resolved through the same mechanism! Hence, they formed one village. Similarly, we can define our own village, in accordance with our traditions and customs!
Our traditions and customs were transmitted from one generation to another, orally. We did not maintain written documents on these. Yet we are well versed with these traditions and customs, and can now define our village according to them. (Figure 2.2)

2.3 Our Powers! But how do we exercise them?

Having seen the listing of powers in the Central PESA in six different ways (discussed in section 1.3) it is important to see how has the State of Himachal Pradesh divided the powers visa-vie Gram Sabha and Panchayat at appropriate level so as to know whether the State has genuinely transferred the powers to us or not.

2.3.1 Powers exclusive to Gram Sabha

The PESA in our state has empowered our Gram Sabha exclusively to execute certain functions, these are:

1. We can approve or reject any plan, project or programme for the social and economic development of our village.

NOTE: The Gram Sabha is empowered to establish “Vigilance Committees” to supervise the Gram Panchayat works, schemes and other activities.
Guiding Suggestion No. 1

In assessing these programmes, we must consider the following factors. We must take into account the desirability of the project in terms of whether there is a felt need for the outputs envisaged at the time of project completion. In addition to the desirability, the viability of the project must also be determined. This assessment may be carried out on the basis of the objectives, the time-period for achievement of these objectives and the costs involved.

- The benefits that result from the project are critical in granting approval. Both, the short-term or immediate gains and the long-term benefits should be taken into account. For instance, in a drought year, the construction of a road which will provide employment to a large number of people, may seem to be a highly desirable, and beneficial project. At another time, the construction of a school or a primary health center, which will have long-term benefits, may be a wise choice.

- In addition to the absolute benefits, we must also take into account the distribution of benefits among the Gram Sabha so that the village as a whole can develop.

We, as members of the Gram Sabha must grant approval for projects only when we are satisfied on all the above parameters.

2. We can select the people who should benefit under the poverty alleviation and other programmes

The power to decide the beneficiaries from the poverty alleviation programmes of the Government now lies with us as Gram Sabha members and not with the Teacher or any Officer authorised by the State. We can also identify the beneficiaries of old age Pension Scheme or Social Security Pension Scheme.

*Note that Poverty Alleviation Programmes for beneficiaries are not restricted to formal Below Poverty Line (BPL) Surveys alone.*

Guiding Suggestion No. 2

We must exercise this power carefully and in selecting the beneficiaries, must keep in mind:

- The extent of land that is owned by a beneficiary. Clearly the land less must be given a priority.
The economic condition of the proposed beneficiary on the basis of his/her source of income, income of the family members or the individual, total number of members in the family including the earning members and the dependants.

The social factors affecting the proposed beneficiaries and the alternative opportunities available to them should be taken into account. For instance a widow with no source of income or an orphan child with no relatives may require more help than a person who is getting insufficient daily wages.

An attempt may be made to ensure that different families benefit from the different poverty alleviation programmes, and only few families are not at an advantage.

The extent to which the individual is capable of utilizing the proposed benefit may also be a deciding factor.

In any case, the parameters should be well in place before the identification of the beneficiaries so that there is a sense of fairness and justice.

3. We can issue the Utilization Certificate (UC) to Panchayats for utilization of monetary resources for the works implemented by the Panchayat.

We must issue this Certificate for the utilization of the funds to the Village Panchayat only when we are completely satisfied that the money allocated for a project is being used properly.

Thus before granting the Utilization Certificate we should ensure:

- The amount of money which has been spent on the project;
- Whether such amount is within the amount sanctioned or exceeds it;
- Whether such amount was used properly.
Guiding Suggestion No 3

We must exercise this power carefully and in selecting the beneficiaries, could keep in mind:

- The extent of land that is owned by a beneficiary. Clearly the land less must be given a priority.
- The economic condition of the proposed beneficiary on the basis of his/her source of income, income of the family members or the individual, total number of members in the family including the earning members and the dependants.
- The social factors affecting the proposed beneficiaries and the alternative opportunities available to them should be taken into account. For instance a widow with no source of income or an orphan child with no relatives may require more help than a person who is getting insufficient daily wages.
- An attempt may be made to ensure that different families benefit from the different poverty alleviation programmes, and only few families are not at an advantage.
- The extent to which the individual is capable of utilizing the proposed benefit may also be a deciding factor.

In any case, the parameters should be well in place before the identification of the beneficiaries so that there is a sense of fairness and justice.

2.3.2 Powers exclusive to Panchayats at appropriate level

As per the Central PESA the planning and management of Minor Water Bodies lies with the Panchayat at appropriate level. The Himachal PESA has also empowered our Panchayat at the appropriate level, to plan and manage our minor water bodies. However, the problem is that it is not clear as to which tier of Panchayat such power has been given. Further the manner in which this function is to be performed has also been left to be prescribed by the State. Such ambiguous provisions create a lot of confusion. This may also be interpreted to mean that such powers may be exercised at any level of Panchayat till the State Government makes specific Rules or gives Orders and specifies such level.
2.3.3 The powers of Gram Sabha OR the Panchayat at appropriate level

Certain powers have been left to the State’s discretion to be devolved either to Gram Sabha or Panchayat at appropriate level. It is important for us to see how has our State exercised this discretion.

It is noteworthy to mention here that all these powers have been assigned to our Gram Sabha. Table-2.1

Table 2.1
Powers Of Gram Sabha Or Panchayat At Appropriate Level: Provisions of Central PESA visa-vie Himachal PESA

<table>
<thead>
<tr>
<th>Issues</th>
<th>Central PESA</th>
<th>Himachal PESA</th>
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<tr>
<td>Consultation before</td>
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<tr>
<td>o land acquisition for developmental projects;</td>
<td>Gram Sabha or Panchayat at appropriate level</td>
<td>Gram Sabha</td>
</tr>
<tr>
<td>o resettling or rehabilitating the people affected by such projects.</td>
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<tr>
<td>Recommendation for</td>
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<tr>
<td>o grant of license or mining lease for minor minerals;</td>
<td>Gram Sabha or Panchayat at appropriate level</td>
<td>Gram Sabha</td>
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<tr>
<td>o grant of concession for exploitation of minor minerals by auction.</td>
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1) We have to be compulsorily consulted before:

   i. The acquisition of any land situated in a Scheduled Area for a development project;

   ii. The rehabilitation of people evicted by such project.
Guiding Suggestion No. 4

If the Government wants to undertake any developmental activity in our village, it must put forward a proposal to us. The said proposal must explain the objectives, need and the benefits amongst other details of the project. If such a project involves displacement of people then the proposal should incorporate the rehabilitation plan. Thereafter, if the Gram Sabha is satisfied that such a project is required, then it may give its consent and recommendations in writing.

2) Our recommendation has to be taken prior to the

I. Grant of prospecting licence or mining lease, for minor minerals in Scheduled Areas; and

II. Grant of concession for the exploitation of minor minerals by auction.

For making any recommendation it is important that the proposal for the above activities is put forward to us for deliberation. As per the Himachal PESA, the State shall prescribe the manner in which we have to give the said recommendation. However the State Government hasn’t yet made any rules as to how we will exercise this power.

Guiding Suggestion No 5

It is important to force the State Government to frame the rules as early as possible. However while giving our recommendation we must take the following factors into consideration:

a. The land or area in respect of which such proposal is being made and its suitability for the proposed purpose;

b. The types of minor minerals which are to be exploited or in respect of which such lease or licence is to be granted;

c. The suitability of the applicant (person making such proposal), i.e., whether the applicant has any previous experience in quarrying;

d. The manner by which the minor mineral is/are to be raised, i.e., whether manual or mechanical;

e. Financial capacity of the applicant

After considering all such factors, we must make the appropriate recommendation within a particular time frame. In case we approve the proposal with some modifications, then we must give reasons for such modifications. In case we do not approve the plan, then we must record reasons for such disapproval.

2.3.4 Powers of Gram Sabha and Panchayat At Appropriate Level:

As the table 2.2 shows our State PESA has departed from the structure of the Central Act. By the mandate of Central PESA all these provisions were to be devolved to both
Gram Sabha and the Panchayat at appropriate level. Further an important provision regarding the prevention of alienation of land belonging to Scheduled tribes in Scheduled areas has been omitted, while the provisions like exercising control over institutions and functionaries in the social sector and local plans, including tribal sub-plans have been given exclusively to Panchayat Samiti, totally restraining the gram Sabha from having any involvement in these matters.

**Table-2.2**

**Powers of Gram Sabha AND Panchayat at Appropriate Level**

**Provisions of Central PESA visa-vie Himachal PESA**

<table>
<thead>
<tr>
<th>The Central PESA</th>
<th>Our State PESA</th>
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<tbody>
<tr>
<td><strong>Powers of Gram Sabha AND Panchayat at appropriate level</strong></td>
<td><strong>Powers of Gram Sabha OR Panchayat at appropriate level</strong></td>
</tr>
<tr>
<td>▪ Enforcing prohibition, restriction and regulation on the sale and consumption of intoxicants.</td>
<td>▪ Enforcing prohibition, restriction and regulation on the sale and consumption of intoxicants.</td>
</tr>
<tr>
<td>▪ Managing village markets.</td>
<td>▪ Managing village markets.</td>
</tr>
<tr>
<td>▪ Owning minor forest produce.</td>
<td>▪ Owning minor forest produce</td>
</tr>
<tr>
<td>▪ Exercising control over money lending</td>
<td>▪ Exercising control over money lending</td>
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<tr>
<td>▪ Exercising control over institutions and functionaries in the social sector.</td>
<td>▪ Exercising control over institutions and functionaries in the social sector.</td>
</tr>
<tr>
<td>▪ Exercising control over local plan and resources for such plans including tribal sub-plans.</td>
<td>▪ Exercising control over local plan and resources for such plans including tribal sub-plans</td>
</tr>
<tr>
<td>▪ Preventing land alienation</td>
<td>▪ Preventing land alienation</td>
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</table>

**Powers given exclusively to Panchayat Samiti**

- Exercising control over institutions and functionaries in the social sector.
- Exercising control over local plan and resources for such plans including tribal sub-plans

**Act Silent about**

- Preventing land alienation

**What hinders us from exercising these powers?**

As regards the following four matters, the law is not clear:

1. Ownership of minor forest produce.
2. Enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant.
4. Control over money lending.

These powers have not been genuinely transferred to us. It is important for us to know how what hinders us from exercising these powers.

- Firstly it is not clear who can exercise these powers, **GRAM SABHA OR GRAM PANCHAYAT?**
- The functions to be performed in respect of these matters, the manner of performing such functions and their extent has to be prescribed by the State.
- The State has not yet issued any rules or directions prescribing the same.

It is incumbent upon the State to clarify such ambiguous and unclear provisions so that the appropriate body can perform the said power.

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**Guiding Suggestion No. 6**

**A) INTOXICANTS:**

*How to regulate sale and consumption of intoxicants?*

The power to enforce prohibition, restriction and regulation on the sale and consumption of intoxicants may include the forming of rules regarding:

a. Issuance and cancellation of permits and licenses for the sale of intoxicants and the conditions on which the license is to be granted. These conditions may involve restrictions like prohibition on child labour; volume of alcohol.

b. The categories of intoxicants which can be sold

c. The persons to whom such intoxicants cannot be sold, for instance, persons under 21 years of age or persons of unsound mind.

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**B) MONEY LENDING:**

*How to exercise control over money lending*

This power may include forming of rules regarding the following:

1. Maintenance of a register of money-lenders registered and operating in the concerned area;
2. The details to be furnished by a money-lender while applying for registration;
3. Conditions for the grant of license, for instance, whether the mandatory condition, of registration of the applicant as a money lender in such area, has been fulfilled,
4. Regular inspections to ensure that no person is carrying on the business of money lending except in the area for which he has been granted the certificate and except in accordance with the terms and conditions of the license;
5. Conditions for the cancellation of the license of a money lender;
6. The maximum amount of loan and the rates at which the loans are to be granted to the inhabitants of such area;

C) MINOR FOREST PRODUCE:

How do we own Minor forest produce?

This may involve forming rules regarding the following:

1. Conditions for granting licenses to collect and sell such produce;
2. Persons who would be allowed to collect and sell such produce, for instance whether all the growers of such produce would be allowed to collect and sell the produce.
3. The rates at which such produce would be sold;
4. The quantity of the produce to be collected and sold;
5. The persons to whom such produce shall be sold, for instance, would it be sold only to the State Government or to any other private purchasers

D) VILLAGE MARKETS:

How do we manage village markets?

This power would involve formulating rules regarding, for instance:

1) Regular inspections to ensure that only licensees are selling the produce in such area;
2) The categories of agricultural and non-agricultural produce which are to be sold in such market area;
3) Regular inspections to ensure that the various produce are being sold at the prices so fixed;
4) The kind and description of the scales, weights and measures which alone may be used in transactions in agricultural produce in the market area;
5) Inspection, verification, correction and confiscation of scales, weights and measures in use in such area;
6) Regular inspections to ensure that no adulterated agricultural product is being sold.
E) INSTITUTIONS AND FUNCTIONARIES IN SOCIAL SECTOR:
The Panchayat Samiti shall exercise control over institutions and functionaries in the social sector
The Panchayat Samiti has been empowered to exercise control over institutions and functionaries in all social sectors. The extent of this power and the manner in which it is to be exercised has to be prescribed by the State government. We have still not received any such prescriptions by our government.

Guiding Suggestion No 7
This power has been given to ensure that there is neither any misuse of power nor any malfunctioning affecting the welfare of the tribals. We must find out which are those institutions as well as functionaries in the social sector. We must insist that our state provides an exact list of such institutions and functionaries to Panchayat Samiti.

F) LOCAL PLANS INCLUDING TRIBAL SUB-PLANS
Panchayat Samiti shall exercise control over local plans and resources for such plans including tribal sub-plans.
In the case of local plans and Tribal Sub-Plans also the extent and the manner in which this power may be exercised by the Panchayat Samiti would be specified by the State government. We still await the specifications from the state in this regard.

Guiding Suggestion No 8
For the purpose of knowing who controls the local plans we need to understand two things clearly: first the role of Tribal Developmental Agencies in our village and secondly, the relationship of these Agencies with the Panchayati Raj Institutions and the Gram Sabha in particular.

2.3.5 Reservation of seats of office bearers in Panchayats for Scheduled Tribes:
To ensure that the people belonging to Scheduled Tribes are given representation in the Panchayats under Scheduled Areas, our State PESA provides that the seats of the office bearers in Gram Panchayats and Panchayat Samities shall be reserved for the
members of Scheduled Tribes. Such reservation shall be in proportion to the population of such scheduled Tribes residing in the Scheduled Area. However in no case such reservation shall be less than one half of the total number of seats although there is no such provision for seats in Zila Parishad. Similarly the posts of the Pradhan of the Gram Panchayat and chairman of the Panchayat Samiti is also reserved for members of Scheduled Tribes, however the post of Chairman of the Zilla Parishad is not reserved.

2.4 To Make PESA Work For Us: Some Suggestions

2.4.1 Making PESA work for us
As we have seen from the above that our State of Himachal Pradesh has been quite reluctant in transferring the powers that has been originally mandated by the Central PESA and has introduced lot discretion on its behalf. However, we are the village community and it is our responsibility to make PESA work for us. After knowing our rights, powers and duties, we must come forward collectively to enforce them. It is our duty to protect our Rights; to ensure the responsiveness of the Gram Panchayat, the Panchayat Samiti and the Zilla Parishad, to our needs. In addition, we must put pressure on those who make laws and policies to devolve effective powers upon our community.

2.4.2 Using the Gram Sabha as a forum
For the realization of our rights, we must attend the Gram Sabha meeting held four times in each year. During these meetings we must deliberate on issues affecting our daily lives and the development of our village. Such meeting of the Gram Sabha shall be presided over by the Pradhan and in absence of Pradhan the Up-Pradhan.
We can also form Vigilance Committees consisting of five or more number of members. Such Committees will supervise the activities and works done by the Gram Panchayat. We can deliberate upon the reports of such committees in the Gram Sabha meeting.

2.4.3 Using the Right to Information
The Right to Information is our Fundamental Right granted by the Constitution. We can demand all the information relevant to our village. To know about the relevant changes in the laws affecting us, as well as the developmental schemes made for us, we must interact with the Sarpanch on a regular basis and make periodic visits to the offices of the Panchayati Raj Department at the Block, district and the State level. These laws may be in the form of Rules, Government orders and Executive Instructions. To increase
our knowledge about the rights available with us we should also interact with local voluntary agencies and the relevant line departments. The Gram Sabha meetings may also serve as a forum for sharing such information as is of interest to the village.
**Part III: LEGAL INTERPRETATION AIDS**

To appreciate the spirit of PESA it is important to develop an understanding of the meaning of key terms used in law. This section not only presents a glossary of terms highlighted in the text but also the fine distinction between them.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>As may be prescribed</td>
<td>The particular subject matter has not been explained in detail and that it would be set down extensively in future by the state.</td>
</tr>
<tr>
<td>Certificate for utilization of funds</td>
<td>Utilization certificate which may be given by Gram Sabha to the Panchayat as a means of auditing the expenses incurred by the Panchayat</td>
</tr>
<tr>
<td>Control</td>
<td>To exercise restraining or directing influence over the something</td>
</tr>
<tr>
<td>Consultation</td>
<td>Deliberation of persons on some subject without a binding effect</td>
</tr>
<tr>
<td>Custom</td>
<td>A rule of conduct which in a given place and among given groups of persons has been followed for a considerable time.</td>
</tr>
<tr>
<td>Customary practice</td>
<td>Habitual practice or course of action, that prevails within a geographical or sociological area and is characteristically repeated in like circumstances</td>
</tr>
<tr>
<td>Customary Law</td>
<td>Law originating from the age-old customs and is recognized as such by the people and the judiciary.</td>
</tr>
<tr>
<td>Customary Modes of Dispute Resolution</td>
<td>Resolving disputes between people belonging to a particular community or village by the traditional leaders or heads of such community or village as per their traditions and customs.</td>
</tr>
<tr>
<td>Government Orders</td>
<td>Orders issued by the State and the Central Government</td>
</tr>
<tr>
<td>Gram Sabha</td>
<td>It consists of all those persons who are registered in the</td>
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</tbody>
</table>
electoral rolls for Panchayat at village level.

Gram Sabha only

Powers conferred to Gram Sabha or the Village assembly exclusively like safeguarding and preserving people’s customs, granting utilization certificate to Panchayats etc.

Gram Sabha or Panchayat at the appropriate level

Powers, which are to be exercised either by the Gram Sabha or the Panchayat

Intoxicants

Anything that ordinarily produces complete or partial intoxication. The term includes Indian liquor, afeem, ganja, charas, bhang, gud, mahua, tadi, salfi etc.

Land Acquisition

Procuring or acquiring ownership of land in the scheduled areas for development projects Government.

Land Alienation

Transfer of property or possession of lands from a Scheduled tribe to any other person

Local Area

Local area ordinarily consists of a habitation or a group of habitations or a hamlet or a group of hamlets thereof comprising a community and managing their affairs in accordance with their traditions and customs

Management

To look after the day-to-day working and handling of the property

Minor Minerals

The Gujarat PESA neither defines it nor contain any provision regarding the same, but it may include building stones, gravel, ordinary clay, ordinary sand etc. The list of minor minerals varies from state to state

Minor Forest Produce

This is defined Gujarat PESA to include timru leaves, mhowra flowers, fruits, seeds and doli or any other class of forest produce which the State Government may declare to be a Minor forest Produce by notifying in the official gazette

Minor Water Bodies

This is not defined in the Central or but may include small structures, small tanks, and wells etc. used for
<table>
<thead>
<tr>
<th>Term</th>
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</thead>
<tbody>
<tr>
<td>Money Lender</td>
<td>The term has been defined in <em>Bombay Money Lenders Act, 1946</em>. Money Lender means a person who carries on the business of advancing loans in our State. It includes an individual, an undivided Hindu Family, a company or an unincorporated body of individuals.</td>
</tr>
<tr>
<td>Ownership</td>
<td>The exclusive right of possession, enjoyment, and disposal, involving as an essential attribute the right to control, handle and dispose.</td>
</tr>
<tr>
<td>Panchayat at Appropriate level</td>
<td>The Three tiers of the Panchayati Raj Institutions including Village Panchayat at the Village level, Taluka Panchayat at the Block level and the District Panchayat at the District level.</td>
</tr>
<tr>
<td>Panchayat at appropriate level only</td>
<td>Powers conferred exclusively to any of the three tiers of Panchayat Raj Institutions (local self government units) like management of water bodies.</td>
</tr>
<tr>
<td>Poverty Alleviation Programmes</td>
<td>Programmes undertaken by the Government to alleviate poverty for instance introducing schemes like Jawahar Rozgar Yojna.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>A favorable statement about something given as an advice not having any binding effect.</td>
</tr>
<tr>
<td>Social &amp; Economic Development Project</td>
<td>Projects undertaken for economic upliftment and social welfare of the people at village level. For example, establishment of a hospital or a school in the village.</td>
</tr>
<tr>
<td>Rules</td>
<td>Rules mentioned in this booklet refer to Rules which have been made in pursuance of legislation or an Act.</td>
</tr>
<tr>
<td>Social Beneficiaries</td>
<td>Village people who are benefited under any development programme aimed at their social &amp; economic welfare.</td>
</tr>
<tr>
<td>Social Functionaries</td>
<td>State officials working in the social sector, who have been conferred certain duties and powers in respect of development and welfare of the village. For example</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>Village</td>
<td>A village declared by the Governor by public notification to be a village and can include a group of villages too.</td>
</tr>
<tr>
<td>Village Market</td>
<td>Small markets in local Villages. (Local haats)</td>
</tr>
<tr>
<td>Vigilance Committee</td>
<td>Committee established by Gram Sabha consisting of five or more number of members, not being members of the Village Panchayat. Such Committees supervise the activities and works done by the Village Panchayat.</td>
</tr>
</tbody>
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Annexure
Annexure No. 1

THE PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996 (ACT 40 OF 1996)
(24th December, 1996)

An Act to provide/or the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-Seventh Year of the Republic of India as follows: -

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution

3. The provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely: -

(a) a 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;
(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs;
(c) 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;
(d) 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:
(e) every Gram Sabha shall —
   (i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
   (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;
(f) even Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects referred to in, clause (e);
(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under Part IX of the Constitution:
   Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats:
   Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;
(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:
   Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;
(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;
(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas;
(1) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

(m) 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—

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(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;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government 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;

(o) the State Legislature shall endeavor to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas.

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President:

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that
effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council by each House of the Legislature of that State
Annexure No. 2

Himachal Pradesh Panchayati Raj (Second Amendment) Act, 1997
(Act No. 1 of 1998)

An Act to further amend the Himachal Pradesh Panchayati Raj Act, 1994 (Act 4 of 1994)

Be it enacted by the Himachal Pradesh Legislative Assembly in the Forty-eighth Year of the Republic of India as follows: -

1. (1) This Act may be called Himachal Pradesh Panchayati Raj (Second Amendment) Act, 1997.

2. In section 1 of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as the principal Act),-
   (b) after sub-section 2, the following sub-section shall be inserted namely;
   “(2-A) In their application to the Scheduled Areas in the State as referred to in clause (1) of Art 244 of the Constitution of India, the remaining provisions of this Act shall apply, subject to the provisions of Chapter VI-A of this Act.”

3. After chapter VI of the Principal Act, the following shall be inserted, namely:-

Chapter VI-A

SPECIAL PROVISIONS RELATING TO THE GRAM PANCAHAYATS, PANCAHAYAT SAMITIS AND ZILA PARISHADS LOCATED IN THE SCHEDULED AREAS

97-A Application of this chapter-(1) The provisions of this chapter apply to the Gram Panchayats, Panchayat Samities and Zila Parishads constituted in the Scheduled Areas in the State.
(2) These provisions of this chapter shall prevail over anything inconsistent therewith elsewhere in this Act.

97-B Declaration of village in Scheduled Areas: For the purposes of section 3, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of
hamlets comprising a community and managing its affair in accordance with traditions and customs.

**97-C Functions of gram Sabha:**

1. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their culture identity, community resources and the customary mode of dispute resolution;

2. Every Gram Sabha shall-
   i. approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level.;
   ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

3. Every Panchayat shall obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in subsection (2)

**97-D Reservation of seats of office bearer in Panchayats**-

The reservation of seats in the Scheduled Areas to every Gram Panchayat and Panchayat Samiti shall be in proportion to the population of the communities in that Gram Panchayat or the Panchayat Samiti, as the case may be;

Provided further that all seats of Pradhan of Gram Panchayat and chairman of Panchayat Samities shall be reserved for the Scheduled Tribes.

**97-E Nomination of persons**

The Government may nominate persons belonging to such Scheduled tribes, who have no representation in Panchayat Samiti or Zilla Parishad as the case may be;

Provided further that such nomination shall not exceed one-tenth of the total members to be elected in the Panchayat Samiti or Zilla Parishad as the case may be.
97-F Acquisition of land in Scheduled Areas:
The Gram Sabha shall be consulted before making the acquisition of land in the Scheduled Areas for development of projects and before re-settling or rehabilitating persons evicted 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.

97-G Management of Minor water bodies in Scheduled Areas:
The planning and management of minor water bodies in the scheduled areas shall be entrusted to Gram Panchayats, Panchayat Samitis or the Zila Parishads, as the case may be, in such manner as may be prescribed.

97-H Minor Minerals in Scheduled Areas:
(1) The recommendation of Gram Sabha, made in such manner as may be prescribed shall be taken into consideration for grant of prospecting licence or mining lease, for minor minerals in Scheduled Areas.
(2) The prior recommendation of the Gram Sabha, made in such manner as may be prescribed, shall be taken into consideration for grant of concession for the exploitation of minor minerals by auction.

97-I Powers and functions of Gram Panchayat and Pancahyat Samities:
The Gram Panchayat or as the case may be the Gram Sabha shall exercise such powers and perform such functions in such manner and to such an extent as may be prescribed in respect of the following matters:
   a. the ownership of minor forest produce;
   b. enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant;
   c. management of village markets by whatever name called;
   d. exercising control over money lending to the Scheduled Tribes.

   (3) The Panchayat samiti shall exercise such powers and perform such functions in such manner and to such an extent as may be prescribed in respect of the following matters:
(a) exercising control over institutions and functionaries in all social sectors.
(b) control over local plans and resources for such plans including Tribal Sub-Plans.