HAMARA GAON HAMARA RAJ
A GUIDE BOOK ON TRIBAL SELF-RULE LAW IN GUJARAT

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TRIBAL SELF-RULE LAW IN GUJARAT

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

1) 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 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.
the Governor. Further, the PESA accepts the **competence of Gram Sabha** in safeguarding and 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 Gujarat**

The Provisions of PESA were operationalized in Gujarat in 1998 when Gujarat Panchayats (Amendment) Act, 1998 was enacted. The Act extended the provisions of Gujarat Panchayats Act, 1993 to Scheduled Areas of the State with certain modifications. In the State of Gujarat, it is applicable in 5,055 villages, in 33 talukas, in 7 districts. Let's call this law on Tribal self-rule **Gujarat PESA**.

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### Box 2.1 Details of the Scheduled Areas in Gujarat

<table>
<thead>
<tr>
<th>District</th>
<th>Taluka (Block)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sabarkantha</td>
<td>Khedbrahma, Vijay Nagar, Bhiloda, Meghraj</td>
</tr>
<tr>
<td>2. Panchmahal</td>
<td>Dahod, Jhalod, Santrampur, Limkheda, Devgadhbaria</td>
</tr>
<tr>
<td>3. Vadodra Chhota</td>
<td>Udaipur, Naswadi, Tilakwada, Jetpur-vapi</td>
</tr>
<tr>
<td>4. Bharuch</td>
<td>Dediapada, Sagbara, Valia, Nandod, Jhaghdia</td>
</tr>
<tr>
<td>5. Surat</td>
<td>Songadh, Uchchhal, Vyara, Valod, Nizar, Mandavi, Mahuva, Mongrol, Bardoli</td>
</tr>
<tr>
<td>6. Valsad</td>
<td>Vansada, Dharampur, Chikali, Paradi, Umargan</td>
</tr>
<tr>
<td>7. Dang</td>
<td>Ahwa</td>
</tr>
</tbody>
</table>

* Sarpanch, Year-I, No. 3, January-March-1997, Western India Panchayati Raj Forum, Ahmedabad

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**2.2 We, The People**

It is important for us to know that Gujarat PESA assigns a pivotal role to us with regard to development planning, management of natural resources and dispute resolution. Apart from our Gram Sabha there are Panchayat Raj Institutions at Village, Block and District level, which comprises our elected representatives (see fig 2.1). Their powers and duties are discussed in the later part of this booklet.
All of us who are registered in the electoral rolls for Panchayat at village level constitute “Gram Sabha”. There shall be gram Sabha in every village. A village according to the Gujarat Panchayats Act, 1993 is a village declared by the Governor by public notification to be a village and can include a group of villages too. The village comprises a local area having a population of less than 15 thousand. In scheduled areas, the said local area ordinarily consists of a habitation (s) or a hamlet (s), living together as a community and managing their affairs in accordance with their traditions and customs. It is important that the villages are defined on community lines and not on the basis of Government revenue records as we have our unique ways of defining our villages, for instance see the figure 2.2

**NOTE:** The definition of local area in Gujarat PESA bears semblance to the definition of village under Central PESA. Though it is this local area, which constitutes a village, the official declaration of the same has been left to the governor of our State. It is important for the governor to keep in mind our customary modes of defining villages, while notifying the villages in Scheduled Areas.
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 2.2).

In consonance with the basic principles of the Central PESA, our State has now recognized by law that the Gram Sabha shall endeavor to take measures to safeguard & preserve:

- 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 celebrate 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!

In consonance with the basic principles of the Central PESA, our State has now recognized by law that the Gram Sabha shall endeavor to take measures to safeguard & preserve:
Our traditions and customs
Our cultural identity
Our community resources
The Customary mode of dispute resolution.

2.3 Our Powers! But how do we exercise them?

The Gujarat PESA lists the powers in the above-mentioned six different ways (discussed in section 1.3) to the Gram Sabha and to the Panchayat at the appropriate level. Some of these powers are to the Gram Sabha alone, some to only the Panchayat at appropriate level and some to either of the institutions. Note that in Gujarat one of the five sets of powers mentioned above i.e. those powers that are necessarily given to the Gram Sabha as well as any other level of Panchayat is absent. Let us now see how the State of Gujarat has exactly allocated powers to the various tiers of local government.

<table>
<thead>
<tr>
<th>Table 2.1 Comparative Inter –Tier Allocation of Powers</th>
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<tbody>
<tr>
<td><strong>Power</strong></td>
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<tr>
<td></td>
</tr>
<tr>
<td>1. Consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects</td>
</tr>
<tr>
<td>2. 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>
</tr>
<tr>
<td>3. Power for planning and management of Minor Water Bodies</td>
</tr>
<tr>
<td>4. Enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants</td>
</tr>
<tr>
<td>5. Ownership of minor forest produce</td>
</tr>
<tr>
<td>6. Prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe</td>
</tr>
<tr>
<td>7. Control over institutions and functionaries in all social sectors</td>
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<tr>
<td>8. Management of village market</td>
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</tbody>
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Hamara Gaon Hamara Raj

<table>
<thead>
<tr>
<th></th>
<th>Control over Money Lending</th>
<th>GS and PAL</th>
<th>Village Panchayats</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td></td>
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<table>
<thead>
<tr>
<th></th>
<th>Control over local plans and resources for such plans including tribal sub-plans</th>
<th>GS and PAL</th>
<th>Taluka Panchayat</th>
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<tbody>
<tr>
<td>10</td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Approval of the developmental plans, programmes and projects for social and economic development</th>
<th>GS only</th>
<th>GS only</th>
</tr>
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<tr>
<td>11</td>
<td></td>
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<table>
<thead>
<tr>
<th></th>
<th>Identifying and selecting beneficiaries for poverty alleviation and other programmes</th>
<th>GS only</th>
<th>GS only</th>
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<tr>
<td>12</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th>Granting of certificate of utilisation of funds or plans programmes and projects that are implemented by the Panchayat.</th>
<th>GS only</th>
<th>GS only</th>
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<tbody>
<tr>
<td>13</td>
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</table>


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:

**BOX- 2.2 Powers Exclusive to Gram Sabha**

- 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;

1. **We can approve or reject any plan, project or programme of the Panchayat for the social and economic development of our village. (See box 1.5)**

### Guiding Suggestion No 1

In assessing these programmes, we could consider the following factors. We can 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 also needs to 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 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 could also take into account the distribution of benefits to 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, Gram Sabha members and not with the with the teacher or any Officer authorized by the State. Note that Poverty Alleviation Programmes for beneficiaries are not restricted to formal Below Poverty Line (BPL) Surveys alone. We should be very clear about all the factors and reasons that we have on the basis of which we would identify the beneficiaries. Some of the possible factors are suggested below.

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**Guiding Suggestion No 2**

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.
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 UC 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;

<table>
<thead>
<tr>
<th>Guiding Suggestion No 3</th>
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<tr>
<td>Additionally, we can also consider the following factors for the granting of the Utilization Certificate:</td>
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<tr>
<td>▪ Whether necessary and sufficient material or labor was used or it exceeded the reasonable standards.</td>
</tr>
<tr>
<td>▪ Whether the project has been completed within the time-period and if not, then the reasons;</td>
</tr>
<tr>
<td>▪ The benefits for which such expenditure has been incurred;</td>
</tr>
<tr>
<td>Only on being satisfied that the funds have not being misused, should we grant the Certificate to the Panchayat.</td>
</tr>
</tbody>
</table>

2.3.2 Powers exclusive to Panchayats at appropriate level

As per the Central PESA the planning and management of Minor Water Bodies is to be vested with the Panchayat at Appropriate level. In our State the Village Panchayats have been empowered to make provisions in respect of planning and management “water bodies”.

It is important to note here that while Central PESA talks about minor water bodies, in our State all the water bodies come under the ambit of Village Panchayats management.

2.3.3 Powers of Gram Sabha OR 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.
Our State PESA does not incorporate any provision regarding grant of prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.

As regards consultative powers regarding land acquisition for developmental projects, the same has been given to Taluka Panchayat.

*Taluka Panchayat has to be compulsorily consulted before:*

1. The acquisition of any land situated in the taluka for a development project;
2. 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 the Taluka Panchayat. 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 Taluka Panchayat is satisfied that such a project is required, then it may give its consent and recommendations in writing.

### 2.3.4 Powers of Gram Sabha AND Panchayat at appropriate level:

Our State PESA totally violating the spirit of Central PESA gives these powers to different tiers of Panchayat Raj Institutions, totally excluding our Gram Sabha from exercising such powers. The Central Legislation sought to empower the gram Sabha by giving it a pivotal role in the management of natural resources, social and economic development of our villages and protecting tribals from exploitative money lending and market practices. Restricting our Gram Sabha from exercising these powers is a violation of the constitutional mandate.

Despite the fact that these powers have been wrongly assigned to Panchayat at appropriate level alone while excluding the Gram Sabha, it is important, at this time to know how can the appropriate levels of the Panchayats exercise their respective powers.

1. **Intoxicants:**
The power to enforce prohibition, restriction and regulation on the sale and consumption of intoxicants has been vested with the Village Panchayat

Guiding Suggestion No 5

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 labor, 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 less than 21 years of age or persons of unsound mind.

2. Minor Forest Produce

As per our State Act Minor Forest Produce found in the area of the village vests in the Village Panchayat. However the National Parks and Sanctuaries have been kept away from the ambit of this provision. Such distinction between minor forest produce from different forestlands have not been made in the Central PESA. **Is our Government is justified in narrowing down the scope of this section like this?**

Further the Act says that the sale proceeds of the minor forest produce shall go into and form part of the Village Fund. It is our duty to ensure that this is done in our villages.

3. Exercising control over institutions and functionaries in the social sector:

The village Panchayat has been empowered to exercise control over institutions and functionaries in all social sectors.

Guiding Suggestion No 6

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 village Panchayat

4. Taluka Panchayat shall exercise control over local plans and resources for such plans including tribal sub-plans.

Guiding Suggestion No 7

For the purpose of knowing who controls the local plans we need to understand two things clearly:
It is important for us to note that all local plans including plans for our village is now to be under overall control of the elected Taluka Panchayats and not the officers of the Government at the Block level.

5. **Money Lending**
If a moneylender wants to lend money to a Scheduled Tribe residing in the Scheduled Areas of our State, he has to take prior permission of the village Panchayat. This means that the village Panchayat will have a control over the rates at which loans are advanced to the Scheduled Tribes, and other terms and conditions of the loan. This provision has been inserted in the Bombay Money-Lenders Act, 1946 following the coming of our State PESA.

6. **Land Alienation**
Without the previous sanction of the District Panchayat no occupancy of a Tribal can be transferred to any person. It is important for us to know that earlier this power was exercised by the Collector, but now it has been transferred to the elected District Panchayat and the Collector does not have this power any longer.

**What if such a transfer has been made without District Panchayat’s sanction??**
If such a transfer has been made without District Panchayat’s sanction then the aggrieved tribal or his successor can take the following course of action:

*Fig 2.3*

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Application to District Panchayat (Within 2 years of transfer) → District Panchayat to hold an Inquiry → If it decides in favor of Tribal, the occupancy is restored to him.
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2.3.5 Reservation of seats for people belonging to Scheduled Tribes:
To ensure that the Scheduled Tribes get representation in the Panchayats at the village, taluka and district level, our State PESA provides that the seats of the office bearers in the Village, Taluka and the District Panchayats in Scheduled Areas shall be reserved for the Scheduled Tribes, such reservation shall not be less than half of the total number seats in such Panchayats. Apart from this the seats of the Sarpanchs in village Panchayats, Presidents in Taluka and District Panchayats shall be reserved for the Scheduled Tribes.

2.4 How 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 Gujarat Pradesh has been reluctant in transferring the powers that has been originally mandated by the Central PESA. 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 Village Panchayat, the Taluka Panchayat and the District Panchayat, 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 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>
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<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 electoral rolls for Panchayat at village level.</td>
</tr>
<tr>
<td>Gram Sabha only</td>
<td>Powers conferred to Gram Sabha or the Village</td>
</tr>
</tbody>
</table>
assembly exclusively like safeguarding and preserving people’s customs, granting utilization certificate to Panchayats etc.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gram Sabha or Panchayat</td>
<td>Powers, which are to be exercised either by the Gram Sabha or the Panchayat at the appropriate level</td>
</tr>
<tr>
<td>Intoxicants</td>
<td>Anything that ordinarily produces complete or partial intoxication. The term includes Indian liquor, afeem, ganja, charas, bhang, gud, mahua, tadi, salfi etc.</td>
</tr>
<tr>
<td>Land Acquisition</td>
<td>Procuring or acquiring ownership of land in the scheduled areas for development projects Government.</td>
</tr>
<tr>
<td>Land Alienation</td>
<td>Transfer of property or possession of lands from a Scheduled tribe to any other person</td>
</tr>
<tr>
<td>Local Area</td>
<td>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</td>
</tr>
<tr>
<td>Management</td>
<td>To look after the day-to-day working and handling of the property</td>
</tr>
<tr>
<td>Minor Minerals</td>
<td>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</td>
</tr>
<tr>
<td>Minor Forest Produce</td>
<td>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</td>
</tr>
<tr>
<td>Minor Water Bodies</td>
<td>This is not defined in the Central or but may include small structures, small tanks, and wells etc. used for day-to-day purposes for drinking, cattle and agriculture</td>
</tr>
<tr>
<td>Money Lender</td>
<td>The term has been defined in <em>Bombay Money Lenders</em></td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Money Lender</strong></td>
<td>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><strong>Ownership</strong></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><strong>Panchayat at Appropriate level</strong></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 the District level.</td>
</tr>
<tr>
<td><strong>Panchayat at appropriate level only</strong></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><strong>Poverty Alleviation Programmes</strong></td>
<td>Programmes undertaken by the Government to alleviate poverty for instance introducing schemes like Jawahar Rozgar Yojna.</td>
</tr>
<tr>
<td><strong>Recommendation</strong></td>
<td>A favorable statement about something given as an advice not having any binding effect.</td>
</tr>
<tr>
<td><strong>Social &amp; Economic Development Project</strong></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><strong>Rules</strong></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><strong>Social Beneficiaries</strong></td>
<td>Village people who are benefited under any development programme aimed at their social &amp; economic welfare.</td>
</tr>
<tr>
<td><strong>Social Functionaries</strong></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 officials working in the government hospitals, schools, banks and other government departments</td>
</tr>
<tr>
<td>Subject to laws in force</td>
<td>The law in question should be in consonance with other laws prevailing in the country</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</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>
</tbody>
</table>
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
Gujarat Panchayats Amendment Act, 1998 (Act No. 5 of 1998)

An Act to further amend the Gujarat Panchayats Act, 1993

It is hereby enacted in the Forty-ninth Year of the republic of India as follows: -

1. (1) This Act may be called the Gujarat Panchayats (Amendment) Act, 1998

2. In the Gujarat Panchayats Act, 1993 (hereinafter referred to as the “the principal Act”) after section 278, the following sections shall be inserted namely: -

   278A This Act shall apply to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, subject to the modifications specified in Schedule IV.

   278AA The enactments specified in Schedule V shall in their application to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, be amended to the extent specified in column 3 of the said schedule.”

3. In the principal Act, after Schedule II, the following Schedules shall be added, namely: -

   SCHEDULE IV
   (See section 278 A)
   (Modifications subject to which this Act applies to the Scheduled Areas of the State)

   2. For section 2, the following section shall be substituted, namely: -

   4. (1) There shall be Gram Sabha for a village for performing such functions as are provided by or under this Act.

   (2) The Gram Sabha shall consist of persons whose names are included in the list of voters of electoral divisions of that village.

   (3) The gram Sabha shall perform the following additional functions:

       (a) The Gram Sabha shall endeavor to safeguard and preserve the traditions and customs of the inhabitants of the village people, their cultural identity, community resources and the customary mode of dispute resolution.
(b) The 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 Village Panchayat.

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes in the village”.

3. In section 7, to sub-section (1) the following proviso shall be added, namely: -

“Provided that while making a recommendation in respect of a local area in the schedules area, it shall be ensured that the local area shall ordinarily consist of a habitation or a group of a habitation or a group of habitations or hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditions and customs.”

11. In section 108 after sub-section (4), the following sub-section shall be added, namely: -

“(5) (a) For the purposes of this Act, There shall be vested in the Village Panchayat minor forest produce found (except found in the areas of National Parks or Sanctuaries) in such area of a forest as is situate in the jurisdiction of that village”

(b) the proceeds of the minor forest produce shall be paid into and form part of the village fund

(c) Nothing in clause (a) shall be construed as vesting in the village Panchayat the land in the area of forest referred to in clause (a) trees and plantations thereon.

Explanation: For the purposes of this sub-section the expression “minor forest produce” shall have the same meaning as assigned to it in clause (9) of section 2 of the Gujarat Minor Forest Trade Nationalisation Act, 1979.

12. In section 112, after sub-section (1) the following sub-section shall be inserted, namely: -
“(IA) The Village Panchayat shall obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects taken referred to in sub-section (3) of section 4.”

13. After section 132, the following section shall be added, namely:-

“132 A The Taluka Panchayat shall be consulted –(a) before acquiring under the Land Acquisition Act, 1894 any land situate in the taluka for any development project; (b) before resettling or rehabilitating persons affected by such project.

14. In Schedule I-

(1) in entry 1 after sub-entry (i), the following sub-entry shall be inserted, namely: -
   (ia) Enforcing prohibition and regulating or restricting the sale and consumption of intoxicants” is vested with the village Panchayat.

(2) in entry 7, after sub-entry (k), the following sub-entry shall be inserted, namely:
   (k-i) Planning and management of minor water bodies shall be vested with the village Panchayat.

(3) after entry 10, the following entry shall be added, namely:-
   11. the power to exercise control over institution and functionaries in all social sectors” is vested with the village Panchayat.

15. In Schedule II, in part I, in entry 5, after sub-entry (d), the following sub-entry shall be added, namely: -

(e) Control over local plans and resources for such plans including tribal sub-plans” is vested with taluka Panchayat