



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

FINAL REPORT

By

ENVIRO LEGAL DEFENCE FIRM

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1. Introduction:

Scheduled areas in India are inhabited by the tribal population who have been managing their natural resources and governing their social, economic and political life through a well- knit system of ancient customs and practices. However, in the wake of modernisation these age old institutions of self governance are fast becoming extinct¹. It is a challenge to usher the tribals in the mainstream of development efforts without disturbing or destroying their cultural identity and socio- economic milieu². To achieve this objective Bhuria Committee was constituted 1994 to examine various dimensions of self rule for tribals, the constitutional requirements and to make recommendations for extending the provisions of the Constitution 73rd (Amendment) Act, 1992 to the Scheduled Areas. Following the recommendations of the committee, the Parliament extended the provisions of 73rd Amendment Act to the Scheduled Areas in the then eight states (now nine states) by passing Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter PESA).

1.1 Devolution of Powers under PESA:

PESA legally recognizes the right of tribal communities to govern themselves through their own systems of self-government and also acknowledges their traditional rights over natural resources. In pursuance of this objective, PESA empowers Gram Sabhas (village assemblies) to play a key role in approving development plans, controlling all social sectors – including the processes and personnel who implement policies, exercising control over minor (non-timber) forest resources, minor water bodies and minor minerals, managing local markets, preventing land alienation and regulating intoxicants among other things.³ Box below highlights the devolution of powers on PRIs in PESA.

1) Mandatory Powers of Gram Sabha

- a. Management of community resources
- b. Approve all plans/projects

¹ Self Governance for Tribals, MoRD- UNDP Sub Program on People's Empowerment through Panchayati Raj Institutions in Schedules V Areas and Studies on Law Affecting the Poor, Singh S.K. (ed.), Vol. IV, NIRD.

² Ibid.

³Section 4, Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996.



- c. Identification of beneficiaries
- d. Issue certificate of utilization of funds

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

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

3) Mandatory Powers to Panchayat at appropriate level

- h. Planning and management of minor water bodies.

4) Powers to Gram Sabha and Panchayat at appropriate level

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

1.2 Adoption of PESA by the State of Andhra Pradesh:

State governments were required to amend their respective Panchayat Raj Acts within a year and not to make any law that would be inconsistent with the mandate of PESA. The State of Andhra Pradesh amended its Panchayati Raj Legislations in 1998 to incorporate the provisions of PESA. Recently, to implement the provisions of PESA, Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA) Rules, 2011 have been enacted. However, the manner in which PESA provisions have been incorporated in Panchayati Raj framework in Andhra Pradesh have been at variance with the letter and spirit of PESA. Besides, parallel provisions exist in other state laws governing the subject matters under PESA, which do not distinguish between a Scheduled Area and a non Scheduled Area. Finally, since the focus nationally is on reviewing the existing approaches to natural resource management in Scheduled Areas and to create an ideal framework for forest and Scheduled Area governance and also various key legislations on forest tribal interface such as new the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, have been enacted, therefore, the PESA framework in Andhra



Pradesh also needs to be updated in the light of national and global developments. With this backdrop, this report presents an analysis of the current status of PESA implementation in the State of Andhra Pradesh and our suggestions and recommendation on effective devolution of powers on each of the subject matters of PESA.

2. Provisions underlying the Basic Principles of PESA

2.1 Definition of a Village Scheduled Areas

Part VI of the A.P Panchayati Raj Act, makes provisions for application of panchayati raj in Scheduled Areas as per PESA. *"Village" has been defined as "ordinarily consisting of a habitation or a group of habitation or a hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs."* [Section 242B, Part VI A.P. Panchayat Raj (Amendment) Act, 1996]

The definition of village has a generic tone of "ordinarily" consisting of habitation or group of habitation or a hamlet or a group of hamlet as if there is a possibility of not ordinarily too! The definition of village should be more definitive with a "shall" clause deleting "ordinarily" to give a clear message to the states in the Central PESA.

Further the use of the word "community" without a clear definition gives conflicting signals whether such community includes all the members of the Gram Sabha or particular tribe or clan in such areas. This should be avoided and a clear provision may be added by replacing the word community and with adding "all the members of the Gram Sabha or particular tribe(s) in that village who are managing their affairs in accordance with tradition and customs.

A.P. Panchayat Raj Act, 1994, Part VI (Inserted by A.P. Panchayat Raj (Amendment) Act 1996).

Delete Section 242B and instead, insert

"Village" means a village in the scheduled areas which shall consist of a habitation or a group of habitations or a hamlet or a group of hamlets, comprising the majority tribal members within such village who manage their affairs in accordance with traditions and customs".

2.1.1 Declaration of a Village

Rules passed by the Andhra Pradesh Government in 2011 for implementing PESA (*Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA) Rules, 2011; hereinafter AP PESA Rules*) provides a process for declaration of village in Scheduled Areas. The process requires the Collector to send a proposal which he has made after consulting the PO, ITDA to the Commissioner at the Commissioners request. The Commissioner on review of the proposal will declare the village in schedule area of the state. (*See Rule 3*)

As per AP PESA Rules Commissioner declares the villages, however, as Part IX of the Constitution, the Governor is authorised to declare villages. Secondly, the there is no provision



for consultation with the community before declaring villages. In our view, since the villages are to be declared as per traditional customs and boundaries, community should be involved in the process of constitution. Also, the Governor need to notify such villages at the hamlet or group of hamlet level in consultation with the respective hamlets whether they are comfortable with such an arrangement. Here the role of the Collector becomes important, but only to the extent of carrying out the administrative and legal responsibility. Infact, in most scheduled districts such information is already available for the village level. A simple appellate mechanism or provision of filing objections to such a reconstitution in a time bound manner may be added to make it a fair process.

A.P. PESA Rules, 2011

Delete the provisions of Rule 3 and instead insert-

Procedure for Constituting the Villages in Scheduled Areas

(i) “Every such hamlet or group of hamlets constituting a village shall be notified by the Governor as follows-

The hamlet or the group of hamlets in the Scheduled Areas as notified by the state government, which are managing their affairs in accordance with traditions and customs shall submit a resolution to the District Collector who shall then forward it to the State Government for such notification.

Before the resolution is forwarded to the state government the District Collector shall cause public notice of the substance of such a resolution to be affixed at convenient places in the hamlet or group of hamlets to be so notified and at the office of the District Collector.

Provided further that the District Collector shall also give an opportunity to any hamlet or group of hamlets to object to any such formation within sixty days of such submission.”

(ii) The Governor shall cancel the notification constituting a village or altering the area of a village constituted as per PESA only at the request of the members of such village through a duly passed resolution.”

2.2 Gram Sabha in Scheduled Areas

Also the terms “Gram Sabha” and “Village” used throughout in the Act must make a clear reference to the village as defined in the Act by using words such as follows:

AP Panchayat Raj Act, 1994

Insert Proviso to Section 242 B

“Every such village shall have a Gram Sabha and “recognised as such by the concerned Panchayats within which such Gram Sabha exists”.

Selection of Presiding Officer of the Gram Sabha and Conduct of Business

As per Rule 4(ii) A.P. PESA Rules, 2011, the Sarpanch of a Gram Sabha shall be the President of the Gram Sabha. The Gram Sabha shall elect a Vice-President and Secretary. The rule 4(iii)



further provides that the meeting convened shall be presided over by the Sarpanch. The Vice-President and Secretary are to be elected amongst the members of the village by show of hands; they will be elected for a period of 5 yrs. The Rules also elaborate the procedure for conduct of business by the Gram Sabha. However, in our view, it is important to give greater autonomy to the Gram Sabha in managing its affairs and in taking decisions regarding the access and use of its resources, if the Sarpanch of the Gram Panchayat is made the head of the Gram Sabha there is a risk that Gram Sabha will become a body of the Gram Panchayat and will not be able to function independently as envisaged in PESA. Therefore, it should be given the power to select its own head from amongst its members, who may or may not be the Sarpanch of the Gram Panchayat. Further, every Gram Sabha should elect its own head, rather than one person presiding over several Gram Sabha meetings. Therefore, to give autonomy to the Gram Sabha to select its representatives and functionaries following provisions may be added.

A.P. PESA Rules, 2011

Delete provisions of Rule 4(ii) and instead insert the following

“The Gram Sabha in its first meeting shall elect its Presiding Officer, Vice President and Secretary from amongst its members. The Presiding Officer of the Gram Sabha shall be , a member of the scheduled tribes who is not the Mukhia, Up-Mukhia or member of the Panchayat, and such meeting shall be presided over by a respected person according to the custom usage traditionally prevalent in that area such as Gram Pradhan, or one known by any other name, or by a person proposed by them or unanimously nominated/ supported by the members present in the meeting.”

2.3 Traditions, customs, customary resources and traditional methods of dispute resolution:

PESA states, *“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.”*

AP Panchayat Act provided that *“Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and without detriment to any law for the time being in force, the customary mode of dispute resolution.” [Section 242 C (1)].*

While the assertion of the Act that the Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution deserves praise, but what constitute “community resources” and what are the accepted customary modes of dispute resolution or atleast the principles that are used for the adjudication in a traditional mode must be laid down or documented to avoid any confusion. A clear provision in the state law to this effect must be incorporated.



Corrective measures:

- Documenting the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- Issuance of directives by the state government to preserve the traditional and customary ethos.
- In addition, the term community resource used in the Central PESA and the A.P PRA needs to be defined as to understand what constitutes community resource.

A.P. Panchayat Raj Act, 1994

Insert Section 242 C (1-a)

“Every Gram Sabha shall document the customary modes of dispute resolution or the general principles that are followed within such customary modes in their respective jurisdiction and such customary modes dispute resolution shall have precedence over other practices as long as they are within the constitutional mandate on similar dispute resolution methods .”

Insert Section 242 C (1-b)

“Every Gram Sabha shall document the traditional management practices of community resources in their respective jurisdiction and such traditional management shall have precedence over other practices as long as they are within the constitutional mandate on similar management practice.”

Insert Proviso to Section 242C (1)

“Community resources means and include common lands such as grazing lands, gothans, khalihans, burial grounds, skinning grounds, cattle pounds, thrashing grounds and other such areas of common usage; water commons such as ponds, lakes, water bodies, wetlands; and forest resources such as panchayat forests, village forests, adjoining reserved, protected forests and such traditional forests by whatever name called.”

3. Powers Exclusive to the Gram Sabha:

3.1 Approval of Plans, Programs and Projects of Socio Economic Development

The Central PESA mandates certain exclusive powers to the Gram Sabha. The first among them is *“every Gram Sabha shall 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”* [Section 4(e) (i)]

AP PRA mandates that the Gram Sabha shall 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.



AP PESA Rules further provide that certain matters such as village agricultural production plans, list of locations of village common lands, functioning of fair price shops, anganwadis, schools, welfare hostels, provisions for drinking water, electricity or any development program.

Rules also mention that the Gram Sabha prepares and approve socio economic profile of each family of the village. Besides, Gram Sabha shall also be involved in the identification and implementation of individual/ community development programs. However, the actual planning for the village development is to be done at Mandal Parishad level.

AP Panchayat Raj Act and PESA Rules, provide sufficient powers to the Gram Sabha for approval of plans. However before preparation of development plans, it is important that a need assessment of the village is also done, in which the Gram Sabha can be instrumental. Following provisions may be added to supplement the existing powers.

AP PESA Rules, 2011

Insert proviso in Rule 4(xiv)

“Provided a mandatory consultation with the Gram Sabha shall be organized to assess the needs of the village, by the Mandal Parishad. The need assessment shall be done by the Gram Sabha and shall be forwarded to the Mandal Parishad. Thereafter plans and programs to addressing the needs of the village will be prepared by the Mandal Parishad and approval of the Gram Sabha shall be taken before they are executed.”

Insert in proviso to Rule 4(xi)

“Provided that full and prior information on each such plan, program and project is provided by the project proponent to the Gram Sabha in a language that is easily and commonly understood preferably in a vernacular language. Every such plan, program and project shall be approved by such Gram Sabha accordingly.”

3.2 Identification and Selection of Beneficiaries

The Central PESA also mandates that *the Gram Sabha shall be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.*
[Section 4 (e)(ii)]

The AP PRA states, *“Every Gram Sabha shall be responsible for the identification or selection of persons as beneficiaries under poverty alleviation and other programmes.” [Sec 242.C (2)(ii)] Besides, of AP PESA Rules, 2011 provides that the Gram Sabha shall prepare and approve socio economic profile of each family which shall include human and natural resources of the village, literacy levels, landless families, woman headed families, benefits so far secured with the details of their present status, village problems, prioritization etc by employing Participatory rural Appraisal Tools. Also that the Gram Sabha shall be involved in the identification and implementation of individual/community development programmes in the area of habitation.*
[Rule 4 (xii) and (xiii)].

This provision is in conformity with PESA hence no change is required



3.3 Issuing Certificate of Utilization of Funds

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

A.P. PRA states that every Gram Panchayat shall obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects referred to in sub-section (2). [Section 242 C (3)]

Further, AP PESA Rules state the Gram Sabha shall furnish certificate of utilization of funds to the concerned agency/Government department for the funds released to it.

This provision is a good example as it not only makes the Gram Panchayat accountable to the Gram Sabha but every government authority/department Central PESA as certificate is required not only by Gram Panchayat but by concerned authority/ Government department as well to which the funds for the development of village have been released under schemes of programs. To supplement the above provisions the following may be added to AP PESA Rules, 2011.

A.P. PESA Rules, 2011

Insert Rules 4(xvi)

“Every Gram Sabha shall also develop a format for granting utilisation certificate which shall be formally recognised as such by the respective Panchayat within which such Gram Sabha exists.”

Format of Utilisation certificate as given in GFR, 2005 modified for use by Gram Sabha

Form of Utilization Certificate

Amount:

Total:

2. Certified that we the Gram Sabha of Village _____ have satisfied ourself that the specifications on which the fund was sanctioned have been duly fulfilled / are being fulfilled and that we have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.

Certified that out of Rs. Of fund sanctioned during the year in favour of For utilisation towards construction _____for which it was sanctioned and that the balance of Rs..... remaining unutilized at the end of the year has been surrendered to, dated

Certified that we have satisfied myself that the conditions on which the funds were allocated have been duly fulfilled / are being fulfilled and that we have exercised the following checks to see that the money was actually utilized for the purpose for which it was sanctioned.



Signature(Gram Sabha of _____ village)
Date

Note: If this form is accepted then the suggested Rule 4(xvi) insertion in AP PESA Rules, 2011 shall be deleted.

4. Powers Exclusive to the Panchayat at Appropriate Level

4.1 Planning and Management of Minor water bodies:

The **Central PESA** mandates as follows: *Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level; (Section 4(j))*

AP Panchayat Raj Act states that the planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Gram Panchayat, Mandal Parishad and the Zilla Parishad as the case may be. **[Section 242G]**

Besides, Gram Sabha has also been entrusted with the function of safeguarding and preserving the community resources of the village. **[See section 242 C (1)]**

In AP PESA Rules brings some clarity on the functions of Gram Sabha and the various tiers of Panchayats in the planning and management of minor water bodies. Rules also define a minor water bodies as “natural water bodies used for fetching drinking water, construction of checks dams and irrigating an extent of land upto 40 hectares⁴”. Further the Rules state that planning of minor water body includes construction of a new minor water body and maintenance of a minor water body includes all works of repair, restoration for maintenance, fixing for ayacut season by season, levy of water rate, their collection and utilization. Panchayat at appropriate level shall share the water rates in a mutually decided ratio with the water user associations. Also, The Rules provide a framework for distribution certain amount of money to the Panchayat at appropriate level for planning and management of minor water bodies Clearly this is desirable and progressive **[See Rule 6]**.

Besides provisions of AP Panchayat Raj Act, 1994 also provided several functions of Panchayat regarding planning and management of water bodies. All these functions can be exercised by the Panchayat at appropriate level in Scheduled Areas within their respective jurisdiction and in conformity with the provisions of part VI of the AP PR Act.

⁴ Rule 2 (iii) A.P PESE Rules, 2011



Sec 45- Duty of Gram Panchayat to provide for certain matters

(iii) the construction of drains and their maintenance and the disposal of drainage water and sullage.

(viii) the sinking and repairing of wells, the excavation, repair and maintenance of ponds or tanks and the construction and maintenance of water works, for supply of water for washing and bathing puposes and of protected water for drinking purposes.

Sec 56- Maintenance of irrigation works, execution of kundimaramat etc.

(1)(a) Subject to such conditions and control as may be prescribed, the Government may transfer to any Gram Panchayat the protection and maintenance of any village irrigation work, the regulation of turns of irrigation, or of distribution of water from any such irrigation work to the field depending on it.

(2)The Gram Panchayat shall have the power , subject to such restrictions and control as may be prescribed, to execute kundimaramat in respect of any irrigation source in the village and to levy such fee and on such basis for the purpose thereof as may be prescribed.

Sec 80- Vesting of water works in Gram Panchayat

(1) All public water-courses, springs, reservoirs, tanks, cisterns, fountain, wells, stand-pipes and other water works (including those used by the public to such an extent as to give a prescriptive right to their use) whether existing at the commencement of this Act or afterwards made, laid or erected at the cost of Gram Panchayat or otherwise for the use or benefit of the public, and also any adjacent land, not being private property, appertaining therto shall vest in the Gram Panchayat and be subject to its control.

Sec.162- Maintenance of common water works and other Institutions

(1) Notwithstanding anything in this Act and subject to rules made in this behalf, two or more Gram Panchayats may-

- (i) Construct and maintain water works for supply of water for washing and bathing purposes and protected water for drinking purposes from a common source.*
- (ii) (B) Additional powers of Panchayat at appropriate level in scheduled area -*

Sec 242 G provides Management of minor water bodies in the Scheduled Areas. Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Gram Panchayats, Mandal Parishads or the Zilla Parishad, as the case may be, in such manner as may be prescribed.



The Rules made in furtherance of the Act provides that

Rule 6- Management of Minor Water bodies in Scheduled Areas

- (i) The Gram Sabha shall be responsible for planning and management of minor water bodies for common benefit of village population where such water bodies falls within the village.*
- (ii) Gram Panchayat shall be responsible for planning and management of minor water bodies for common benefit of the people of Gram Panchayat concerned, if such bodies benefit people for one or more villages within a Panchayat.*
- (iii) The Mandal Parishad shall be responsible for planning and management of minor water bodies for common benefit of people of Gram Panchayat concerned.*
- (iv) The Zilla Parishad shall be responsible for planning and management of minor water bodies for common benefit of people living in the Mandal Parishads concerned where such water bodies fall within the limits of 2 or more Mandals.*
- (v) The appropriate body shall be responsible for planning and management of water bodies for common benefit of people living under its limits where such water bodies fall within the jurisdiction of two or more Zilla Parishads.*
- (vi) Planning of minor water body shall also include planning and construction of new water body.*
- (vii) Management of water body shall include all works of repair, restoration for maintenance, fixing of ayacut season, levy of water rate, its collection and utilization.*
- (viii) The Gram Panchayat, Mandal Parishad, Zilla Parishad Appropriate Government, as the case may be, shall collect appropriate water rate and share it with the water Users Associations concerned wherever they exist, in the ratio as mutually decided for taking up development activities thereunder.*
- (ix) The Government shall provide requisite amount every year for the maintenance of minor water bodies. This grant shall be on pro-rata basis and be transferred to the appropriate Panchayat account.*

No change in AP Panchayat Raj Act or PESA Rules is required as powers of planning and management have been allocated with reasonable clarity.

However, it is also important to look at the subject matter laws, whether they are in conformity with the PESA provisions in Scheduled Areas.

AP Irrigation, Utilization and Command Area Development Act, 1984

Insert Definition of 'Minor Water body' in Section 2

“Minor Water Body shall means natural water bodies used for fetching drinking water, construction of check dams and irrigating an extent of land upto 40 hectares”



Insert Section 3(5)

“In Scheduled Areas, a Command Area Development Authority shall perform all functions with regard to a minor water body, in consultation with the Gram Sabha or Panchayat within whose jurisdiction the minor water body falls. Further, no plans or schemes formulated by the Command Area Development Authority shall be inconsistent with any plan or scheme formulated by the Gram Sabha or Panchayat at appropriate level as per Rule 6 of Andhra Pradesh Panchayats Extension to Scheduled Areas (PESA) Rules, 2011.”

Insert Section 18-A

“In Scheduled Areas, any authority or agency formed under this Act, shall perform its functions with regard to a minor water body, in consultation with the Gram Sabha and Panchayat at appropriate level.”

Insert Section 18-B

“The Irrigation Officer shall prepare a record of, size and location of minor water bodies falling within the jurisdiction of Gram Sabhas, Gram Panchayats, Mandal Parishads and Zilla Parishads in the Scheduled Areas of the State.”

Insert Proviso in Section 19

“provided that in Scheduled Areas, the irrigation officer shall take approval of the Gram Sabha or the Panchayat at appropriate level as the case may be before regulating supply of water from a minor water body.”

Insert Section 20(6)

“In Scheduled Areas, the Gram Sabha or the Panchayat at appropriate level shall impose a penalty for unlawful use of water or for wastage of water or contamination of water of a minor water body.”

Insert proviso to section 21

“provided that stoppage of water supply from a minor water body shall not be done in Scheduled Areas, without taking prior approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls”

Insert subsection (4) to section 23

“dispute regarding a minor water body in scheduled areas shall not be settled by the relevant authority under this Section without taking opinion of the Gram Sabha or the Panchayat at appropriate level within whose jurisdiction the minor water body falls.”

Andhra Pradesh (Telangana Area) Irrigation Act, 1357 F

Insert the definition of Minor Water Bodies in Section 3

“Minor Water Body shall mean natural water bodies used for fetching drinking water, construction of check dams and irrigating an extent of land upto 40 hectares”



Insert proviso in Section 5

“Provided that in Scheduled Areas, the construction, control and maintenance of minor water bodies shall be done by the Gram Sabha or Panchayat at appropriate level, within whose jurisdiction the minor water body falls.”

Insert proviso in Section 6

“provided that no such notification shall be issued for supply of water from a minor water body in a Scheduled Area, without seeking prior approval of the Gram Sabha or or Panchayat at appropriate level, within whose jurisdiction the minor water body falls.”

Insert proviso to Section 9

“provided that in Scheduled Areas, the power to regulate supply of water from any irrigation work which is also a minor water body shall be with the Gram Sabha or the Panchayat at appropriate level, within whose jurisdiction the minor water body falls.”

Insert subsection 3 to section 19

“On receipt of the application under subsection (1) for supply of water from a minor water body in Scheduled Areas, the Irrigation officer shall seek prior approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls.”

Insert proviso in Section 20

“The irrigation officer shall not stop supply of water from any irrigation source which is a minor water body in scheduled areas without seeking prior approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls.”

Insert proviso to Section 30

“provided that in Scheduled Areas, the rate of water tax for the use of water of a minor water body shall be prescribed by the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls.”

Insert proviso to section 31

“provided that penalty for unlawful use or wastage of water from a minor water body in scheduled areas shall be levied by the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls”

Insert proviso to section 37

Provided that all the Acts mentioned in this section with regard to a minor water body in scheduled areas shall not be carried out without prior written approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls or proposed to be constructed.”

Insert subsection (3)(m) to section 66

“Rules for planning and management of minor water bodies in Scheduled Areas shall be framed by the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the minor water body falls.”



A.P. (Andhra Area) Irrigation Tanks (Improvement) Act, 1949

Insert proviso to Section 3

“provided that in Scheduled Areas, any improvement of a tank which is also a minor water body shall not be carried out under this Act without the prior, written approval of the Gram Sabha or Panchayat at appropriate level within whose jurisdiction the aforesaid tank falls.”

Andhra Pradesh Irrigation (Construction and Maintenance of Water Courses) Act, 1965

Insert Definition of Minor Water Body in Section 2

“Minor Water Body shall mean natural water bodies used for fetching drinking water, construction of check dams and irrigating an extent of land upto 40 hectares.”

Insert proviso in Section 3

“provided that in Scheduled Areas, the ayacutdars shall construct and maintain minor water bodies with the prior, written approval of the Gram Sabha or the Panchayat at appropriate level within whose jurisdiction the aforesaid minor water body falls or is proposed to be constructed.”

Insert subsection (4) to section 4

“In Scheduled Areas, the Irrigation officer shall not construct a minor water body without seeking prior written approval of the Gram Sabha or the Panchayat at appropriate level within whose jurisdiction the aforesaid minor water body falls or is proposed to be constructed.”

5. Powers to the Gram Sabha or Panchayat at Appropriate Level

5.1 Consultation before Land Acquisition for Development Projects and before resettling or rehabilitating persons affected by such projects

The Central PESA mandates as follows:

- i) the gram sabha or the Panchayats at the appropriate level shall be **consulted** before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level; (**Section 4(i)**)*

Three legal issues emerge here.

- First, what is the legal meaning of consultation in the absence of any definition in the Act.



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

Prior to answering these questions, it is important to examine how the state of A.P has allocated this power.

AP Panchayat Raj Act, 1998

As per the Sec.242 F of A.P. Panchayat Raj Act, 1998 Acquisition of land in the Scheduled Areas. The Mandal Parishad shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling 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.

The AP PESA rules made in this behalf provide the process of such consultation for acquisition of land in the Scheduled Areas⁵.

- 1. When the government considers land acquisition under any Act, the Government or the concerned authority will submit to the Mandal Praja Parishad the following written information alongwith the proposal;-
 - (i) The complete outline of the proposed project including the possible impact of the project.*
 - (ii) Proposed land acquisition*
 - (iii) New people likely to settle in the village, any possible impact on area and society.*
 - (iv) The proposed participation amount of compensation, job opportunities, for the people of the village.**
- 2. After getting the complete information the concerned Mandal Praja Parishad will be competent to summon the representatives of the concerned authorities and the Government to examine them either individually or collectively. It will be mandatory for all such persons summoned to furnish point-wise clear and correct information.*
- 3. The Mandal Praja Parishad after considering all the facts shall make a recommendation regarding the proposed land acquisition and rehabilitation plan of the person displaced.*
- 4. The recommendation of the Mandal Praja Parishad shall be considered by the Land Acquisition Officer.*
- 5. In case the Land Acquisition Officer is not in agreement with the recommendations of the Mandal Praja Parishad, he will send the case back to the Mandal Praja Parishad for consideration.*

⁵ Rule 5 of A.P PESA Rules,2011



6. *If after the second consultation, the Land Acquisition Officer passes an order against the recommendations of Mandal Praja Parishad, he shall record the reasons for doing so in writing.*
7. *In case of industrial projects, all Mandal Praja Parishad that are influenced by such project shall be consulted.*
8. *The progress of rehabilitation plan should be placed before the Mandal Praja Parishad after every 3 months from the date of notification for land acquisition.*
9. *If in the opinion of the Mandal Praja Parishad, suggested measures are not followed, the Mandal Praja Parishad may inform the State Government in writing regarding the same, and it will be mandatory for the State Government to take appropriate actions.*
10. *RR Packages shall have necessary features as shown below:*
 - a) *Each project affected family of ST category shall be given preference in allotment of land in ayacut.*
 - b) *Each project affected tribal family shall get additional financial assistance equivalent to 500 days of minimum agriculture wage for loss of customary rights/usage of forest produce.*
 - c) *Tribal Project Affected Families will be re-settled close to their natural habitat of their choice, to the extent possible, in a compact block so that they can retain their ethnic, linguistic and cultural identity.*
 - d) *The tribal families residing in the Project Affected Areas having fishing rights in the river/pond/dam shall be given fishing rights in the reservoir area.*
 - e) *The project affected tribal families shall be resettled and rehabilitated within the Scheduled areas.*

Though the rules are very comprehensive in detailing the acquisition process, however, they can be strengthened further to secure the rights of the marginalised. Following issues and corrective measures are noteworthy:

- The above provisions allocate the power of ‘consultation’ to Mandal Praja Parishad in case of land acquisition in Scheduled Areas. However, neither in PESA nor in any of the panchayat or land acquisition laws of Andhra Pradesh the term “Consultation” has been defined. “Consultation” as per its Dictionary meaning is an “act of seeking advice or opinion”⁶ which is non-binding in nature. In other words, the power of mandatory consultation does not give the right to accept or reject the proposal of acquisition or resettlement or rehabilitation, hence is inadequate to secure the rights of the village community affected by the acquisition. Further, as mentioned above, the Land Acquisition Officer is not bound to accept the recommendations of the Mandal Parishad. In this case it is not an effective provision as the land can be acquired even if the Mandal Parishad does not approve of it. Therefore, it is recommended that in Central PESA and

⁶ Black’s Law Dictionary, 8th ed.



subsequently in respective Panchayat law of AP that the term consultation needs to be defined on the lines of “*free and prior informed consent*”.

- Secondly, the power to give recommendations on the acquisition and resettlement and rehabilitation scheme has been given to the Mandal Parishad. In our view, it should be given to the Gram Sabha, as the Gram Sabha is directly affected by acquisition proposal instead of the Mandal Parishad and therefore should have the power to approve or reject the proposal.
- Thirdly, since, as of now, there is no legislation on resettlement and rehabilitation either at the Central level or at the State level, therefore, to implement the provisions of PESA, the National Resettlement and Rehabilitation policy, 2007 needs to be given legal sanctity.

The A.P Panchayat Raj Act, 1994

Replace the provisions of Section 242F with

“(1) In Scheduled Areas, no acquisition of land or resettlement and rehabilitation of persons affected by such acquisition shall take place without prior consultation with the Gram Sabha. The Land Acquisition Officer shall convene a meeting of the Gram Sabha and carry out a consultation process on the proposed acquisition of land or before resettlement or rehabilitation of persons affected by such acquisition.

Provided that Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of National Resettlement and Rehabilitation Policy 2007 till the time a new legislation is passed”

Provided that land compulsorily acquired for a project cannot be transferred to any other project or purpose except for a public purpose, without carrying out a fresh and prior consultation with the Gram Sabha.

(2) All the three levels of Panchayat shall render necessary assistance to the Gram Sabha in exercising the powers under this section and in ensuring proper implementation of Rehabilitation and Resettlement schemes proposed.”

Insert Explanation in 242F

“For the purposes of this Act, Consultation with its cognate and grammatical variations shall mean publicising the acquisition proposal by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information about the acquisition proposal and its impact on livelihood and conservation.”

AP PESA Rules, 2011

Rule 5- *Replace “mandal parishad or Mandal Praja Parishad” with the “Gram Sabha(s)”*

Insert Explanation in Rule 5(1)

“ Explanation: the proposal shall include, the area proposed to be acquired, location of the area, purpose of acquisition, type of land to be acquired, estimate number of people to be displaced, impact on resources of the village, estimate number of trees shall be cut, impact



on wildlife, consequences of acquisition of land particularly on the livelihood and the effects on surrounding area, resettlement and rehabilitation scheme proposed and such other information as the Gram Sabha may requires to take decision on the proposal”

Delete the provisions of sub-rule (3),(4),(5),(6) of Rule 5

Insert Rule 5(3) as

“The Gram Sabha(s) shall after considering all the opinions, facts, documents, information shall pass a resolution approving, rejecting or modifying the proposal. The Resolution shall be sent to the Gram Panchayat and Land acquisition officer within 15 days of its passing.”

Insert the following provision in Rule 5(4)

“The decision of the Gram Sabha shall be binding on the State Government. In case the Land Acquisition Officer is not in agreement with the decision of the Gram Sabha, it can file its objections with reasons before the Gram Sabha for its consideration. The Gram Sabha shall give due consideration to the objections and pass a resolution accepting or rejecting the objections partly or wholly as it may deem necessary. ”

Insert Rule 5(5)

“In deciding the acquisition proposal the Gram Sabha may take recommendations of the Gram Panchayat, Mandal Parishad and Zilla Parishad.”

Insert the following provisions in Rule 5(9)

“Gram Sabha may also rescind its acceptance of the proposal.”

Insert Rule 5(10)(f)

“Any other measure that the Gram Sabha decides”

Thirdly, similar enabling provisions may be inserted in Land Acquisition Act, 1894 as applicable in A.P to make it consistent with PESA and APPRA.

Land Acquisition Act. 1894 as applicable in Andhra Pradesh:

Insert proviso in section 4 (explanation)–

“provided that in Scheduled areas, the smallest revenue administrative unit is a ‘village’ as defined in PESA.”

Insert proviso to Section 5-A

“The Collector shall convene a meeting of the of the Gram Sabha and carry out a consultation process with the Gram Sabha on the proposed acquisition of land or before resettlement or rehabilitation of persons affected by such acquisition”

Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of National Resettlement and Rehabilitation Policy 2007 till the time a new legislation is passed”



5.2 Prior recommendation in granting prospecting license or mining leases for minor minerals as well as grant of concession for exploitation of minor minerals by auction

*Central PESA states that : The **recommendations** of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas; (**Section 4(k)**)*

*Central PESA states that “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”; (Section 4(l))*

The AP Panchayat Raj Act

Minor minerals in the Scheduled Areas:

The recommendations of the Gram Panchayat, made in such manner as may be prescribed, shall be taken into consideration prior to grant of prospecting license or mining lease, for minor minerals in the Scheduled Areas.[Section 242 H(1)]

The prior recommendation of the Gram Panchayat, 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. [Section 242 H(2)]

The AP PESA Rules provide that:

Rule 7 Minor minerals in the Scheduled Areas

Grant of prospecting license or mining lease for minor mineral

- (i) Only individual local members of ST or societies comprising of exclusively local ST members shall be entitled for grant of prospecting license or mining lease for minor minerals and grant of concession for exploitation of minor minerals for auction.*
- (ii) The Mining Department shall refer all applications received for grant of prospecting license or mining lease for minor minerals in the Scheduled Areas to the concerned Gram Panchayat for their consideration.*
- (iii) The Gram Panchayat shall forward its approval or reject individual or tribal societies or Tribal Mining Corporation by passing an appropriate resolution within 4 weeks.*
- (iv) The decision of the Gram Panchayat shall be **binding and final**.*

Legal Issues in allocation of the above powers:

- In AP, the PR Act and PESA Rules vest the power to recommend in the Gram Panchayat in a manner prescribed in the Rules. However, in law, recommendation is in the nature of opinion or view and is not binding on the party. Therefore, in order to adequately protect



the interest and resources of the Gram Sabha, recommendation may be replaced with “Free and Prior Informed Consent”.

- The power of free and prior informed consent prior should ideally be vested in the Gram Sabha, as, the village community will be directly impacted by the mining of minor minerals in the village. Also, PESA envisages the Gram Sabha as the custodian of the natural resources of the village, therefore, it must have a right to regulate, approve, and prohibit any activity in the village which has impact on the life and livelihood of its people
- Thirdly, the Rules partially excludes the discretion of the Gram Panchayat to decide on whom to grant minor minerals prospecting licenses, mining leases or concessions for exploitation by auction, as they could only be granted to local Scheduled Tribes members or societies comprising exclusively of scheduled tribes members. In our view Gram Sabha should have full discretion to take decision in this regard.

In the light of the above following amendments are recommended:

AP Panchayat Raj Act, 1998

Delete Section 242 H (1) and (2) replace the provisions with the following Replace the provisions of Section 3(h) with:

(1) “The Free, prior and informed consent of the Gram Sabha or Gram Sabhas in case the proposed area for lease falls within the jurisdiction of two or more Gram Sabhas, shall be made mandatory prior to grant of prospecting licenses, mining leases, or for concessions for exploitation of minor minerals by auction, in the Scheduled Areas.”

Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicizing the proposal for mining or quarrying by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information about the mining/quarrying proposal and its impact on livelihood and conservation.

“Provided that every application for renewal or transfer of mining leases, or quarry license, or for concession shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha(s) is mandatory.

(2) The Gram Sabha shall have the authority to accept or reject the application for prospecting license, mining leases and for concessions for exploitation of minor minerals by auction, prescribe or alter the rate of royalty/rent, promote competitive bid, prescribe conditions for mining leases, alter the area proposed for mining and period of such lease, renewal of mining leases or concession for exploitation of minor minerals by auction”

Insert subsection Section (3) in Section 242H

“(i) The Gram Sabha(s) shall maintain a record of prospecting licenses, mining leases and concessions for exploitation of minor minerals by auction for which consent has been given.

(ii) On the request of the Gram Sabha, the Gram Panchayat, Mandal Parishad and Zilla Parishad shall render necessary assistance to the Gram Sabha in carrying out its function under this section.”



AP PESA Rules, 2011

In Rule 7, replace the word “Gram Panchayat” with “Gram Sabha”

Delete Rule 7(1) and instead insert the following provisions

“Gram Sabha shall have the discretion to grant prospecting license, mining leases or concessions for exploitation of minor minerals by auction to any tribal or non tribal person or organisation. Gram Sabha may give special preference to the applications of individual local members of ST or societies comprising exclusively of local ST members.”

Insert Sub Rules to Rule 7 in the following manner

“(v) After receipt of the application for mining leases in Scheduled Areas, the Mining Department shall within fifteen days, inform the Gram Panchayat and the Gram Sabha or Gram Sabhas as the case may be, within whose jurisdiction the proposed area of mining falls, by issuing a public notification, beat of drum and by affixing a copy of the notification at a conspicuous place in the village(s).

(vi) The notification shall contain location, size of the proposed mining area and type of minor minerals proposed for extraction, period of lease and such other particulars as it may deem necessary.

(vii) Thereafter, the authorised officer of the Mining Department along with the Applicant shall within fifteen days of publication of notice organize a consultation with the Gram Sabha or Gram Sabhas as the case may be and inform about the conditions of quarry leases, area proposed for mining, period of lease, rehabilitation and resettlement plan for the persons displaced by proposed mining operations (if any), impact on the forest, wildlife and biodiversity and livelihood of the village communities and such other information sought by the Gram Sabha.

(viii) The Gram Sabha shall then, through a resolution decide on the proposal within four weeks which shall be binding on the Mining department and the Applicant. The Gram Sabha may accept, reject the proposal or alter or impose such terms and conditions on lease as it may deem necessary. The Gram Sabha(s) may alter the location and size of the Area proposed for exploitation of minor minerals.

(ix) A copy of the resolution of the Gram Sabha(s) shall be sent to the Gram Panchayat and to the Mining department within 15 days of its passing.

(x) Every application for renewal of mining leases shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha as per the procedure mentioned above shall be obtained.

(xi) A register of mining leases granted within its jurisdiction shall be maintained by the Gram Sabha and Gram Panchayat, containing such particulars as it may deem necessary.

Andhra Pradesh Minor Mineral Concession Rules 1966

In addition, Andhra Pradesh Minor Mineral Concession Rules, 1966 also grant powers to the Mines and Geological department in the state to regulate supervise and control mining rights in respect of minor minerals. In particular, the department performs among others the following functions:

- approves granting of quarry leases and permits⁷

⁷ Rule 9, AP Minor Mineral Concession Rules, 1966



- imposing conditions on mining operations⁸
- penalty for unauthorized quarrying⁹
- special provisions for removal of minor minerals from government lands, reserved forest.

As mentioned above, PESA vests the above powers in the Gram Sabha or Panchayat at appropriate level in Scheduled Areas. But the concession rules do not make a distinction between scheduled and non scheduled areas and vests the control over minor mineral operations in the State Government. This is clearly, inconsistent with PESA and hence needs to be amended.

Andhra Pradesh Minor Minerals Concession Rules, 1966

Insert exception in proviso to Rule 5

“provided that the Government shall have the power to grant exemption from obtaining a lease or permit for quarrying minor minerals in any area ‘except Scheduled Areas in the state’ in case of any category of persons, subject to such conditions as may be specified in the order granting such exemption.”

Insert Sub Rule 8A- “Quarry lease or permits for extraction of minor minerals in Scheduled Areas”

(1) The free, prior and informed consent of the Gram Sabha or Gram Sabhas in case the proposed area for lease falls within the jurisdiction of two or more Gram Sabhas, shall be obtained by the competent Licensing Authority, prior to grant of prospecting licenses, quarry leases and permits, or for concessions for exploitation of minor minerals by auction.

“Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicizing the proposal for mining or quarrying by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information about the mining/quarrying proposal and its impact on livelihood and conservation.

“Provided that every application for renewal or transfer of mining leases, or quarry license, or for concession shall be treated as a fresh application and a free, prior and informed consent of the Gram Sabha(s) is mandatory.

(2) The Gram Sabha shall have the authority to accept or reject the application for prospecting license, mining leases and for concessions for exploitation of minor minerals by auction, prescribe or alter the rate of royalty/rent, promote competitive bid, prescribe conditions for mining leases, alter the area proposed for mining and period of such lease, renewal of mining leases or concession for exploitation of minor minerals by auction”

Insert exception in Rule 9-A(1)

*“the state government may by notification in the Official Gazette, reserve any area ‘except a Scheduled Area’ for exploitation by the Government
.....section 617 of the Companies Act, 1956 (Central Act 1 of 1956).”*

⁸ Rule 31, AP Minor Mineral Concession Rules, 1966

⁹ Rule 26, AP Minor Mineral Concession Rules, 1966



Insert sub rule 3 in Rule 11

“Gram Sabha may also pass a resolution with reasons to be recorded in writing imposing a penalty or recommending closing of the quarry area or imposing such other conditions as it may deem necessary, after giving a reasonable opportunity of being heard to the lessee. The Director shall take necessary action on the resolution of the Gram Sabha.” If a penalty is imposed, it shall be deposited in the funds of the Gram Sabha and shall be used for the development of the village or for any other purpose that the Gram Sabha decides.”

Insert Sub Rule 3 in Rule 26

“ten percent of the penalty collected from unauthorised quarrying shall be deposited in the funds of the Gram Sabha within whose jurisdiction the quarry area lies”

Insert Rule 13A

“Particulars of any mining lease, prospecting license or concession for exploitation of minor minerals by auction granted in scheduled Areas, shall be informed to the Gram Sabha concerned within 15 days of grant of such mining lease, prospecting license or concession for exploitation of minor minerals by auction.”

6. Powers to Gram Sabha and Panchayat at Appropriate Level

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

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

The state amendments to the A.PPRA

Powers and functions of Gram Panchayats and Mandal Parishads:

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 extent as may be prescribed in respect of the following matters, namely :-

Enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant. (Section 242.I. (1).(a))

The Rule 8(I) of the A.P PESA, 2011 provides for much authority to Gram Panchayats and Mandal Parishads than the Central PESA

- a) *The Department concerned shall inform its intention to establish a unit for manufacturing liquor in a village to the Gram Sabha concerned for its opinion on the production or*



manufacture of liquor in the said village. Gram Sabha will convey its opinion in the form of a resolution within 4 weeks. Based on the resolution of the Gram Sabha the department concerned shall act upon about the production/ manufacture of liquor in the village under intimation to Gram Sabha concerned.

- b) The Gram Sabha shall be consulted before the grant of any license to open liquor shop in the village. Gram Sabha will convey its opinion in the form of resolution within four weeks. The license shall be granted to local scheduled tribe only.*
- c) The Department concerned shall issue a speaking order for granting or not granting any license to open liquor shop/ bar in the village under imitation to the Gram Sabha concerned. The Gram Sabha resolution shall be binding and final.*
- d) The Gram Sabha shall determine the quantity of traditional liquor that may be brewed/ produced by Scheduled Tribes living in a village for their consumption but not sale having regard to the traditions, customs relating to consumption of local liquor during marriage and other social and religious ceremonies and their cultural identity.*

The above provisions of state PESA authorise the Gram Sabha to give its opinion to the department on the opening of liquor shops, grant of liquor license for manufacture of liquor in the village. However, this opinion is not binding on the Excise Department and the excise officer can grant a license inspite of the will of the gram sabha. This does not render effective powers to prohibit, regulate sale and consumption of intoxicants in the village to the Gram Sabha. In our view following amendments in AP PESA Rules is necessary:

AP Panchayat Raj Act, 1998

Insert proviso in Section 242 I (1)(a)

“provided that in Scheduled Areas, no intoxicant shall be exempted by the State Government from the purview of this Act except with the prior approval of the Gram Sabha”

AP PESA Rules, 2011

Delete sub rule (a),(b) and (c) of Rule 8(I)

Insert Sub Rules in Rule 8(I)

- a) “Gram Sabha shall in consultation with the Gram Panchayat exercise the power to enforce prohibition, regulate or restrict the sale and consumption of any intoxicant in the village.”*
- b) In the Scheduled Areas, no licence for manufacture, possession or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, establishment of breweries, distilleries and warehouses shall be provided, without the prior approval of the Gram Sabha. The Competent Authority to grant license for the sale, possession or manufacture of any intoxicant shall refer every proposal to the concerned Gram Panchayat along with the respective Gram Sabha within that jurisdiction for their decision, within thirty days from the date of receipt of such a reference. The Gram Panchayat along with the concerned Gram Sabha shall*



intimate their decision within thirty days thereafter. The competent Authority shall ensure that such intimation has been sent and also a response received conveying the decisions of the Gram Panchayat as well as the respective Gram Sabha

- c) The Gram Sabha shall specify the quantity for retail sale and wholesale of any intoxicants in the village in consultation with the Collector.*
- d) The Gram Sabha shall specify the licensing fee and other conditions for manufacturing intoxicants for commercial purposes only and their sale in consultation with the concerned Excise Officer.*
- e) The Gram Sabha shall specify the area for setting up of distilleries, breweries, outlets for sale and warehouses for intoxicants within the village in consultation with the Excise Officer.*
- f) The Gram Sabha shall also specify the terms and conditions for employment of women and children or prohibit the employment of women and children in the manufacturing units in consultation with the concerned Excise Authority.*
- g) The Gram Sabha shall also specify the terms of lease, rent, time of opening and closing of retail and wholesale outlets within the village and such other conditions as the Gram Sabha may deem necessary to prescribe from time to time in consultation with the Collector.*
- h) Twenty percent of the revenue generated from payment of licensing fee, rent, penalty shall be deposited in the funds of the Gram Sabha and shall be used for the development of the village.*
- i) The Gram Sabha shall maintain a register, to record the particulars of the licensee, manufacturing unit, retail and wholesale outlets operating in the village, terms and period of license, renewal of licenses and such other particulars as the Gram Sabha may deem necessary.*
- j) The Gram Sabha may impose prohibition on the manufacture, sale, consumption, possession of many intoxicants within the village after consulting the Excise Officer concerned.*
- k) In case of violation of any of the conditions of the license or rules framed by the Gram Sabha regarding manufacture, sale, consumption or possession of any intoxicants, the Gram Sabha shall after giving the licensee a reasonable opportunity of being heard, impose a penalty or any other restriction as prescribed by it and shall also have the power to cancel the license. After passing a resolution to impose a penalty or cancel the license, or impose any other restriction, the Gram Sabha shall send a copy of its resolution to the Competent Authority which issued the license, and to the Gram Panchayat. The Competent*



Authority shall proceed to act on the decision of the Gram Sabha and recover the penalty or cancel the license of the manufacturer or the retailer or impose any other restriction specified by the Gram Sabha in its resolution, within one month of receiving the resolution of the Gram Sabha. The Gram Panchayat shall assist the Gram Sabha to carry out all functions mentioned in this Rule.”

Insert proviso in Rule 8(I)

“Provided that for the purpose of these Rules, Competent Authority shall mean Excise Officers as defined in AP Excise Act, 1968 which are competent to issue licenses for manufacture, possession, sale and exclusive privilege of intoxicants and intoxicating drugs under AP Excise Act, 1968.”

“Provided that for the purpose of these Rules, intoxicants shall mean intoxicants as defined in Section 2(19) AP Excise Act, 1968 and also includes ‘intoxicating drug’ and any other country spirit locally manufactured according to customs and traditions if the village.”

- l) For regulation of intoxicants in Scheduled Areas, every Gram Sabha shall make rules for grant of license for manufacture and sale of intoxicants, duration of licenses, terms for renewal of licenses, fix the number of manufacturing units or retail outlets to be set up in the village, places for establishing manufacturing units or retail outlets, time of opening and closing of liquor shops, prohibition on sale manufacture and sale of certain intoxicants in the village, restriction on the quantity or retail sale of intoxicants, prohibition on sale of intoxicants to certain persons and such other rules as the Gram Sabha deems necessary. Gram Panchayat shall organise a meeting of the Gran Sabha for framing rules for regulating the above mentioned activities.”*

- m) “If any rule framed by the State Government for regulation of intoxicants within the purview of this Act, so far as it is applicable to Scheduled Areas, is inconsistent with a corresponding Rule(s) framed by the Gram Sabha, in that case the said rule(s) framed by the Gram Sabha shall supersede the one framed by the State Government.”*

Intoxicants in the State are regulated mainly by the Provisions of AP Excise Act, 1968 and rules framed thereunder. The control of intoxicants is with the Excise department of the State. The Excise Act make provisions for import, export, manufacture, sale, consumption and possession of intoxicants, procedure for applying for licenses and exclusive privileges, penalties on violation of the term of license, collection of license fee, excise duty and countervailing duty, imposing prohibition on issue of license, cancellation of license and permits among others. The Act and the Rules, do not make a distinction between the scheduled and non scheduled areas and therefore, does not take into account the powers of the Gram Sabha and Panchayat in imposing prohibition and regulating sale and consumption of intoxicants in Scheduled Areas, as per the provisions of PESA. Therefore, there is overlapping jurisdiction over intoxicants. Several amendments are suggested to correct this



anomaly and ensure effective transfer of authority over intoxicants to the local bodies in Scheduled Areas.

AP Excise Act, 1968

Insert Section 2-A- Regulating Manufacture, Sale, Consumption, possession of Intoxicants in Scheduled Areas

- a) *“Provisions of this Act or rules framed thereunder, shall not apply to Scheduled Areas of Andhra Pradesh to the extent they are inconsistent with the provisions of Section 242I(1)(a) of Andhra Pradesh Panchayati Raj Act, 1998 and Rule 8(I) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA), Rules 2011 . All acts done previously under the provisions of this Act in Scheduled Areas shall be deemed to have been done under the provisions of this Section.”*
- b) *“For the purpose of Scheduled Areas, ‘intoxicants’ shall include ‘intoxicating drugs’.”*

Insert the following to section 13(1)

“provided that in Scheduled Areas no such license shall be issued without the free, prior, informed, consent of the Gram Sabha.”

“Explanation: Free, prior and informed consent with its cognate and grammatical variations shall mean publicizing the application for issue of license of permit for manufacture, sale, consumption and possession of intoxicants or any other related acts, by issuing of public notice in local dailies or by beat of drums in the village and nearby areas, discussion and dialogue with the concerned Gram Sabha, formal written consent of the Gram Sabha after providing full and prior information.”

“The procedure for seeking approval of the Gram Sabha shall be as mentioned in Rule 8(I)(b) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA), Rules 2011.”

Insert proviso to section 13(3)

“Provided that no such notification shall be issued for scheduled areas without seeking approval of the Gram Sabha or Gram Sabhas as the case may be and the Gram Panchayat concerned.”

Insert proviso in section 14(2)

“provided that in scheduled areas, such limits shall be prescribed by the Gram Sabha while granting permit for possession of intoxicants.”

Insert proviso to Section 15(2)

“In Scheduled Areas, the license for sale and buying shall not be given without obtaining free, prior and informed consent of the Gram Sabha of the village in which the buying and selling have to take place.”



Insert proviso in Section 32

“provided that the Gram Sabha shall also levy penalty for violation of any term of the license or possession of intoxicants in excess of the permissible limit or for violation of any Rules framed by the Gram Sabha to prohibit or regulate manufacture, sale and consumption of intoxicants in Scheduled Areas.”

“provided further that, twenty percent of the penalty amount collected by the Excise Department from Scheduled Areas shall be deposited in the funds of the Gram Sabha is levied and shall be used for the development of the village.”

Insert proviso in Section 32

“In Scheduled Areas, no license shall be withdrawn by without the prior, written approval of the Gram Sabha.”

Insert proviso to Section 33

“In Scheduled Areas, if a license is surrendered the vendor of intoxicants, the Gram Sabha within whose jurisdiction the vendor used to operate shall be intimidated in writing within 15 days of acceptance of the surrender by the Excise Department.”

Insert proviso to section 37

“provided that the Gram Sabha if it deems necessary shall have the power to levy such additional penalty as it deems fit.”

Insert proviso to Section 37-A

“provided that the Gram Sabha if it deems necessary shall have the power to levy such additional penalty as it deems fit.”

Andhra Pradesh Excise (Lease of Right to Sell Indian Liquor and Foreign Liquor in Retail) Rules, 1993

Insert subsection 1-A “Applicability to Scheduled Areas”

“these Rules shall not be applicable to the sale of intoxicants in Scheduled Areas.”

The Andhra Pradesh Excise (Indian and Foreign Liquor Retail Sale Condition of licenses) Rules, 1993

Insert Section 1-A

“these Rules shall not be applicable to the Scheduled Areas, to the extent they are inconsistent with the provisions of Section 242I(1)(a) of Andhra Pradesh Panchayati Raj Act, 1998; Rule 8(I) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA), Rules 2011.

Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970

Insert Rule 34-A

“Provisions of Rule 23 to 34 with regard to sale of Indian liquor and foreign liquor in scheduled areas shall be read with the provisions of Section 242I (1)(a) of Andhra Pradesh



Panchayati Raj Act, 1998; Rule 8(I) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA), Rules 2011. In case of inconsistency, the provisions of Andhra Pradesh Panchayati Raj Act, 1998; Rule 8(I) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA), Rules 2011 shall override the provisions of the above Rules.”

Insert Rule 36(2)

“The licensee shall also affix a list of categories of persons to whom the sale of liquor is prohibited in the village.”

Insert proviso to Rule 37

“provided that in Scheduled Areas, the Gram Sabha may reduce the hours of business of when the shops or may specify the days when the shops shall remain closed.”

Insert proviso to rule 40

“provided that on the death of a licensee operating in Scheduled Areas, the licence shall be allowed to be continued in favour of the legal representative or heir of the deceased, only after seeking prior written approval of the Gram Sabha.”

AP Excise (Arrack & Toddy Licenses General Conditions) Rules, 1969

Insert proviso in Rule 4

“Rules for conduct of business in Scheduled Areas which include time of opening and closing the shops, location of the shops, days when the shops shall remain closed, maximum quantity to be sold, prohibition on the sale of arrack and toddy to certain category of persons shall be prescribed by the Gram Sabha at the time of grant of approval for the retail license.”

Insert sub rule (2) in Rule 31

“In case the license of a licensee operating in Scheduled Areas is suspended or cancelled, intimation to the Gram Sabha of such cancellation of license shall be given within 15 days by the Collector.”

Andhra Pradesh Brewery Rules, 1970

Insert Rule 3-A- “Application for license for setting up Brewery in Scheduled Areas”

- a. *“If the Commissioner receives an application for license to establish a brewery in a Scheduled Area, the Commissioner shall publish the contents of the application in the village or villages where the brewery is proposed to be established and in nearby areas, within 15 days of the receipt of the Application and shall seek the free, prior and informed consent of the Gram Sabha (s) concerned. Gram Sabha shall pass a resolution within 30 days of publication of application rejecting or approving or modifying the application and shall send a copy of its decision to the Commissioner and Gram Sabha within 15 days of passing the resolution. The resolution of the Gram Sabha shall be binding on the Commissioner. In case the Commissioner disagrees with the decision of the Gram Sabha, it can send the Resolution for reconsideration with reasons recorded in writing. The Gram Sabha shall consider the resolution again and may rescind, modify or approve the decision. Gram Sabha shall pass a fresh resolution and shall send to the Commissioner within 15 days which shall be*



binding on the Commissioner.

Provided that, in case the proposed area of the brewery covers more than village, the Gram Sabhas concerned shall pass a joint Resolution.

- b. The Commissioner shall issue the license on the terms of the Resolution of the Gram Sabha.*
- c. The Resolution of the Gram Sabha issued as per Rule 1-A may contain conditions including, duration of licenses, terms for renewal of licenses, places for construction of brewery, conditions of employment of members of village community, prohibition on employment of women and children, disposal of waste from the brewery, rehabilitation and resettlement plan for displaced person of the village if any and any other condition that the Gram Sabha deems necessary.*
- d. "The Gram Sabha shall maintain a register of the particulars of the licensee, employees working in the brewery, terms of the license and such other particulars as the Gram Sabha deems necessary."*
- e. "Every application for transfer of license shall be treated as a fresh application and Procedure mentioned in Rule 1-A shall be complied with."*

Andhra Pradesh Distillery Rules, 1970

Insert Sub Rule 3-1A

"Rule 3-A- "Application for license for setting up a distillery in Scheduled Areas"

- a. "If the Commissioner receives an application for license to establish a brewery in a Scheduled Area, the Commissioner shall publish the contents of the application in the village or villages where the distillery is proposed to be established and in nearby areas, within 15 days of the receipt of the Application and shall seek the free, prior and informed consent of the Gram Sabha (s) concerned. Gram Sabha shall pass a resolution within 30 days of publication of application rejecting or approving or modifying the application and shall send a copy of its decision to the Commissioner and Gram Sabha within 15 days of passing the resolution. The resolution of the Gram Sabha shall be binding on the Commissioner. In case the Commissioner disagrees with the decision of the Gram Sabha, it can send the Resolution for reconsideration with reasons recorded in writing. The Gram Sabha shall consider the resolution again and may rescind, modify or approve the decision. Gram Sabha shall pass a fresh resolution and shall send to the Commissioner within 15 days which shall be binding on the Commissioner.*

Provided that, in case the proposed area of the distillery covers more than village, the Gram Sabhas concerned shall pass a joint Resolution.

- b. The Commissioner shall issue the license on the terms of the Resolution of the Gram Sabha.*
- c. The Resolution of the Gram Sabha issued as per Rule 1-A may contain conditions including, duration of licenses, terms for renewal of licenses, places for construction of distillery, conditions of employment of members of village community, prohibition on employment of women and children, disposal of waste from the brewery, rehabilitation and resettlement plan for displaced person of the village if any and any*



other condition that the Gram Sabha deems necessary.

- d. The Gram Sabha shall maintain a register of the particulars of the licensee, employees working in the Distillery, terms of the license and such other particulars as the Gram Sabha deems necessary.*
- e. Every application for transfer of license shall be treated as a fresh application and Procedure mentioned in Rule 1-A shall be complied with.”*

Note: Rules have also been framed for regulating the manufacture, sale, purchase, transport, import and export of denatured spirits, denatured spirituous preparations, rectified spirits, which are also types of alcohol but and used in industrial preparations and not meant for human consumptions and hence need not to be regulated by the Gram Sabha and Gram Panchayat.

6.2 Ownership of Minor Forest Produce

Regarding Minor Forest Produce, the Central PESA provides ...“While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the ownership of minor forest produce; (Section 4(m) (ii))

Besides, Forest Rights Act, 2006 (FRA) gives the right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries. Both and FRA and PESA are key legislations of Scheduled Area governance, therefore they need to be read together. PESA endows ownership of MFP but is silent on other aspects like access and use.

The A.P. Panchayat Raj Act

Powers and functions of Gram Panchayats and Mandal Parishad: *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 extent as may be prescribed in respect of ownership of minor forest produces. (Section 242 I (1)(b))*

The rule 8 (II) Ownership and disposal of minor forest produce

- a) Ownership and mode of disposal of minor forest produce shall vest with the individual members of Gram Sabha subject to monopoly rights of GCC by Trade Regulation 1979 issued in G.O.Ms.No.20, SW (F2) Dept., dated 14.2.1983 for procurement of MFP except Bamboo and Beedi leaf. In respect of Bamboo and Beedi leaf, management, harvesting and disposal shall be done by the forest Department who shall undertake harvesting duly following scientific silvicultural practices as prescribed in the working plans/management plans for the respective divisions. Forest Department shall pass on*



the net revenue from such disposal of the Bamboo and Beedi leaf harvesting from the area allotted to the Gram Sabha, to the respective Gram Sabha who may in turn pass it on to individual members of Gram Sabha.

- b) Any individual collector of minor forest produce in the habitation, in case of dispute over jurisdiction relating to ownership, access to collect, use and disposal of such produce traditionally collected by him/her shall inform the Gram Sabha for settlement.*
- c) After verification of such claims on the right of ownership of minor forest produce of individual collector, the Gram Sabha shall pass a resolution settling such dispute.*
- d) The Gram Sabha shall maintain a register containing the names of each collector of minor forest produce in the habitation.*
- e) The project Officer of Integrated Tribal Development Authorities (ITDA) concerned shall review compliance to these rules.*
- f) The Project Officer, ITDA shall be made the Chairman of the committee constituted for the management of Bamboo and Tendu products in the respective jurisdiction.*

With the above allocation of powers several legal issues emerge such as:

PESA and FRA vest the right of ownership of MFP in the Gram Sabha. Ownership right is a collection of several rights which include, access, collection, storage, local level processing and disposal among others. However, AP PESA Rules, recognise the ownership of Gram Sabha over limited types of MFP. Thus for example harvesting and disposal of bamboo beedi leaf are given to the Forest Department, though the revenue proceeds are given to the Gram Sabha and then the Gram Sabha distributes them to the individual members. Therefore, the Gram Sabha has no say in manner of disposal of MFP such as fixing of prices etc. Besides, the Chairman of the Committee constituted for the management of Bamboo and Tendu products is *Project Officer*, ITDA which is a government appointed functionary. Ideally, the management of Tendu and bamboo (both being MFP) should be under the Gram Sabha. ITDA should have a facilitating role.

Following amendments are suggested to achieve effective devolution of powers on the Gram Sabha and to bring about the provisions of AP Panchayat Raj Act and AP PESA Rules in conformity with central PESA and FRA

AP PESA Rules, 2011

***Delete sub rule (a), (e) and (f) of Rule 8(II) and
Insert the following provisions in Rule 8(II)***

(a) "To own and have right of access to collect, use and dispose of minor forest produce within and outside the village boundaries where members of Gram Sabha of a village have had traditional access.

(b) The Gram Sabha shall prepare a list of minor forest produce that are of important for the livelihood of the people of the village and also the quantity and type of minor forest produce collected by each family based on their livelihood needs a copy of which shall be sent to the Gram Panchayat and the Forest Department each. The Gram Sabha shall also have the power to revise this list to include or exclude any minor forest produce, as and when it may deem necessary and having due regard to its sustainability.

Explanation – for the purposes of this section, "Minor Forest Produce" includes all non-timber



forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and 'forest produce' which would be notified by the State Government.

Explanation- The term 'timber' would be assigned the same meaning as in Indian Forest Act as applicable in Andhra Pradesh except the inclusion of bamboo."

(c) "Gram Panchayat, Mandal Paishad and Zilla Parishad shall assist Gram Sabha in the integrated management and supervision of collection, storage, processing, marketing, value addition of minor forest produces through the Gram Sabha.

(d) Gram Sabha and the Gram Panchayat shall be facilitated by the Forest Department in the overall management of MFP for its sustainable management and use especially through value addition, market linkages and minimum support price among others."

Besides, in Scheduled Areas of the Andhra Pradesh, **AP Scheduled Areas MFP (Regulation of Trade) Regulation, 1979**, is applicable which creates State monopoly in the trade of MFPs. It provides for appointment of an agent for the purposes of purchase of and trade in any MFP on behalf of the government. The AP Government appointed Girijan Cooperative Corporation (GCC) Ltd. Vishakhapatnam, as its agent. No person other than the Corporation shall sell or purchase or cure or otherwise process or collect or store or transport any MFP to which this Regulation applies. As mentioned earlier, Girijan Co-op. Corporation Ltd. is involved in the trade of 25 notified MFP in the State. It is a State Tribal Development Corporation locally known as GCC. It discharges full responsibility in procurement and sale of the most of the MFP items. No private traders or middlemen are engaged in the trade of 25 MFP leased out to GCC. It is an apex body with affiliated Girijan Primary Co-op Marketing Societies (GPCMS). The membership in these societies is open exclusively to the local tribal. The trade in Bamboo and Beedi Leaf is done by the Forest department. Also, under the Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971, Abnus (Tunika or Beedi) Leaves and bamboos have been nationalised. Under the Andhra Pradesh Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979, 25 items including Gum Karaya, Olibanum, Bee Wax, Apiary and Rockbee Honey, Dry Amla, Tamarind, Mohwa Flowers and Seed have been nationalised.

The above laws clearly do not make a distinction between scheduled and non scheduled areas and obviously does not take into account the important role of the Gram Sabha as mandated in PESA and FRA. Therefore, to ensure effective devolution of the above said powers to the Gram Sabha and Gram Panchayat, and to bring uniformity in the legislative framework, following amendments in state forest laws that regulate access, use, transit, marketing of forest produce, are suggested.

Andhra Pradesh Forest Act, 1967

Insert explanation in Section 2(g),

"Forest produce shall include minor forest produce also. "Minor Forest Produce shall include all non-timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and 'forest produce' which would be notified by the State Government."



Insert the following phrase in Section 2(r)

Tree includes “minor forest produce” such as bamboo, brush wood, stumps and cane

Insert proviso in Section 15

“provided that in Scheduled Areas the bonafide right of ownership, access to collect, use and dispose of minor forest produce as mentioned in PESA and Forest Rights Act, of any person or person living in and around a proposed reserved forest shall not be affected by the settlement and recording of rights process carried out by the Collector.” The right shall be recorded as it is by the Collector.”

Insert proviso to Section 26

“provided that in a protected forest falling within a Scheduled Area, the Government shall not reserve any tree which has been declared as a minor forest produce without the approval of the Gram Sabha or Gram Sabha within whose jurisdiction notified area is situated”

“provided that in a protected forest falling within a Scheduled Area, the Government shall not prohibit the collection and removal of minor forest produce without seeking prior permission from the Gram Sabha or Gram Sabhas within whose jurisdiction the notified area is situated.”

Insert proviso in section 27(1)

“provided that in Scheduled Areas, any rules framed by the state government within this section, which impacts minor forest produce shall be in conformity with any rules framed by the Gram Sabha(s) governing, access to collect, use and dispose of minor forest produce.”

Insert proviso in section 27(2)

“provided that wherein a Scheduled Area, any person commits theft of any minor forest produce or collects more than the quantity permissible by the Gram Sabha , shall be punishable with such additional fine as may be prescribed by the Gram Sabha”

Insert proviso in Section 29

“Provided that in Scheduled Areas, all rules regarding the transit and possession of minor forest produce shall be framed in consultation by the Gram Sabha”

Insert proviso in Section 45

“Provided that in Scheduled Areas, in case any offence is committed regarding a minor forest produce, such power shall be exercised by the Gram Sabha. The forest officers shall render all necessary assistance to the Gram Sabha in preventing the commission of such offences.”

Insert exception in Section 60

“Exception: this provision shall not apply to minor forest produce collected from a Scheduled Area in the State, where the minor forest produce shall be deemed to the property of the Gram Sabha (s) of the village(s) from where it was collected.”

Andhra Pradesh Forest Contract (Disposal of Forest Produce) Rules, 1977

Insert Sub Rule 1-A

“These Rules shall not apply to sale of minor forest produce collected from Scheduled Areas. The manner, quantity, price, buyer and other aspects of disposal of minor forest produce shall



be decided by the Gram Sabha of the village from where the minor forest produce is collected. Provided that the forest department and the Gram Panchayat shall render necessary assistance to the Gram Sabha in disposal of minor forest produce.”

Andhra Pradesh Forest Produce Transit Rules, 1970

Insert proviso in Rule 5A- “Transit permit for minor forest produce removed from Scheduled Areas”

“Any person desiring to remove for transit any minor forest produce from any forest in a Scheduled Area, permission shall be taken from the Gram Sabha concerned.”

(ii) Application shall be filed with the Divisional Forest Officer who shall forward the same to the Gram Sabha within 15 days of its receipt for its approval.. The Gram Sabha shall organise a meeting within one month of receiving the application and take a decision to accept or reject the application or impose such conditions as it deems necessary. The Resolution shall be forwarded to the Divisional Forest Officer and the Gram Panchayat within 15 days of its passing. If the application is accepted the DFO shall issue the permit in Form I, along with such conditions as the Gram Sabha may have prescribed.”

(iii) Gram Panchayat shall maintain a list of particulars of the persons to whom permits have been issued for removal and transit of minor forest produce.”

Andhra Pradesh Forest Settlement Rules, 1969

Insert Rule 1-A

“Nothing in these Rules shall affect the bonafide right of the Gram Sabha or any of its members over minor forest produce as granted by PESA and FRA.”

Andhra Pradesh Saw Mills (Regulation) Rules, 1969

Insert Section 2A

“In a Scheduled Area, the Gram Sabha may, through a resolution, declare an area within its jurisdiction to be a Prohibited Area, and no licenses for establishment or operation of saw mills shall be granted by the State Government for a prohibited area so declared.”

Andhra Pradesh Forest Produce (Fixation of Selling Prices) Act, 1989

Insert proviso to section 1

“Provided that nothing in this Act or Rules framed thereunder shall apply to minor forest produce over which the Gram Sabha and Panchayat have ownership right as per Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996 and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and any area in relation to such minor forest produce falling within a Scheduled Area.”

Insert explanation in Section 2(b),

“Forest produce shall include minor forest produce also. “Minor Forest Produce shall include all non-timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or tendu leaves, medicinal plants and herbs, roots, tubers and the like and ‘forest produce’ which would be notified by the State Government.”



Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 and AP Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules, 1970

Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 and AP Minor Forest Produce (Regulation of Trade in Abnus Leaves) Rules, 1970 shall be repealed as they are inconsistent with PESA and FRA. The above Act and Rules, create state aims to create state monopoly in the trade of minor forest produce whereas, as mentioned above, PESA and the recently enacted Forest Rights Act, instead vests the ownership rights over minor forest produce in the Gram Sabha.

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

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

A.P Panchayat Raj Act states, “*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 extent as may be prescribed in respect of prevention of alienation of land in the Scheduled Areas and restoration of any unlawfully alienated land of Scheduled Tribe. [Section 242 I (1)(c)]*

Further AP PESA Rules, 2011 provides regarding prevention of alienation of lands in the scheduled areas and restoration of alienated lands of scheduled tribe:

“*The Gram Sabha shall:*

(a) *Prepare a list of landholders containing the details of extent of land held and names of the Pattadars along with enjoyers.*

(b) *Verify the veracity of social status claims of all the Pattadars as to whether Pattadar is a genuine scheduled tribe.*

(c) *Verify as to whether the lands are purchased in the name of a tribal woman and enjoyed by a non-tribal.*

(d) *Visit the field if desired and physically verify as to whether the lands are cultivated by the tribal or by the non-tribal taken on lease, mortgage, etc.; and*

(e) *Approve the list of beneficiaries for assignment of Government lands.*

(f) *In all cases mentioned at (a) – (e) above, if Gram Sabha, after thorough investigation is satisfied that certain occupations are in violation of the Andhra Pradesh Land Transfer*



Regulation, 1959 as amended from time to time, Gram Sabha shall pass a resolution mentioning the details of violation. Competent authority under the Andhra Pradesh Land Transfer Regulation 1959 as amended from time to time shall initiate consequential action.

(2) If there are conflicting claims in respect of the possession of lands, the Gram Sabha shall convene a meeting and call for evidence in support of such claims from the concerned to pass appropriate resolutions and request to the competent authority under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 to initiate consequential action.

3) The Gram Sabha shall also convene a meeting on receipt of any complaint on alienation of land in favour of a non-tribal or suo-motu pass appropriate resolution and shall forward the same to the competent authority to take necessary action to restore the land to the scheduled tribe transferor.

4) Any person aggrieved by the resolution of Gram Sabha may within a period of sixty days from the date of resolution file a petition to the competent authority under A.P Scheduled Areas Land Transfer Regulation, 1959.

5) The competent authority under A.P Scheduled Areas Land Transfer Regulation, 1959 may either allow or reject or refer the petition to Gram Sabha concerned for reconsideration.

6) After receipt of such reference, the Gram Sabha meet within a period of thirty days, hear the petition, pass resolution on that reference and forward the same to the competent authority under A.P Scheduled Areas Land Transfer Regulation, 1959.

7. The competent authority under A.P Scheduled Areas Land Transfer Regulation, 1959 shall consider the resolution of Gram Sabha and pass appropriate order, either accepting or rejecting the petition.

8) The competent authority under A.P Scheduled Areas Land Transfer Regulation, 1959 shall invariably implead the Gram Sabha concerned for their considered opinion in every case of land alienation involved tribal and non-tribal. The Gram Sabha concerned shall implead and the opinion of Gram Sabha shall be duly examined.

9) The Competent Authority under A.P Scheduled Areas Land Transfer Regulation, 1959 shall furnish the copies of judgments to Gram Sabha concerned every year.

10) While restoring possession of land to tribal, the competent authority shall obtain signature of Gram Sabha to that extent.

Legal Issue:

The above provisions of AP PESA Rules, 2011 only authorise the Gram Sabha to pass a resolution or give an opinion accepting or rejecting the alienation, which may or may not be accepted by the Competent Authority under A.P Scheduled Areas Land Transfer Regulation, 1959. Since the resolution of the Gram Sabha is not binding on the authority, the Gram Sabha cannot be



effective in preventing the alienation of land or restoring unlawfully alienated land of a scheduled tribe, as envisaged by PESA. Therefore, following amendments are suggested:

AP PESA Rules, 2011

Insert Sub rule (f) in Rule 8(III)(I)

(f) The Resolution of the Gram Sabha shall be binding on the Competent Authority

Insert amendment in sub rule (5)

delete the words “may either allow or reject or”

Delete the provisions of Sub rule (7) and instead insert

“The resolution of the Gram Sabha mentioned in sub rule (6) shall be binding on the competent authority and it shall pass appropriate order. The Competent Authority shall take necessary action within 15 days of passing of the order to evict the trespasser from the land of the Scheduled tribe and restore unlawfully alienated land. The Competent Authority shall inform the Gram Sabha of all actions taken and the result achieved.”

Delete sub rule (8 and (9) and instead insert

“Ever matter that was presented before the Competent Authority of the unlawful alienation of the land of a Scheduled Tribe shall be compulsorily presented by the Competent Authority within 15 days before the Gram Sabha for its decision.”

The A.P. (Scheduled Areas) Land Transfer Regulation, 1959 provides the legal framework for the alienation of land in Scheduled Areas, Sec 3 of which lays down that unless the transfer of land is in favour of an Scheduled Tribe member or a registered society composed of ST members, it shall be deemed invalid. The Act speaks of an 'Agent/' 'Agency divisional officer/' 'any other prescribed officer for that purpose'; to essentially ensure that the mentioned provision (Sec. 3) is complied with. The functions of the said functionary include restoration of an unlawfully alienated land of a Scheduled Tribe to a non-Scheduled Tribe person. Juxtaposing the functions of the Gram Panchayat with regard to land alienation as laid down by the AP PESA with those of the above-mentioned functionary or agent, we see that the PESA indicates a complete takeover/overlap of the functions of the Agent by/with the Gram Panchayat.

The A.P. (Scheduled Areas) Land Transfer Regulation, 1959

Insert Regulation 1A

“ In case of unlawful alienation of a land of a Scheduled Tribe and restoration of such unlawfully alienated land, the procedure mentioned in Section 242 I (1)(c) of Andhra Pradesh Panchayati Raj Act, 1994 as amended in 1998 and Rule 8(III) of Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA) Rules, 2011 shall be complied with.”



6.4 Management of Village Markets

The Central PESA mandates: “While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to manage village markets by whatever name called. [Section 4(m) (iv)]

AP Panchayat Raj Act

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 extent as may be prescribed in respect of the following matters, namely :- Management of village markets by whatever name called (Section 242.I. (1).(d))

Rule 8 (IV) of A.P PESA Rules 2011

Management of Village Markets/Shandies/Santhas/Angadia or whatever name called

- 1) The Gram Panchayat concerned shall be the Market Committee to manage village markets (by whatever name called) in Scheduled Areas.
- 2) The Gram Panchayat of the villages situated in Scheduled Areas where weekly markets (by whatever name called) shall discharge the following functions as markets committees in the Scheduled Areas.
 - a. License, should be given only to local Scheduled tribes.
 - b. maintain and manage the market yards.
 - c. regulate and opening, closing and suspending of transactions in a market yard.
 - d. Supervise the conduct of market functionaries.
 - e. enforce the conditions of license;
 - f. regulate the making, execution and enforcement or cancellation of agreement of sales, the weightment, delivery, payment and all other matters relating to marketing of agricultural produce, NTFP Produce, live stock or product of live stock and all matters ancillary thereto.

Disposal of minor forest produce include local level processing value addition, transportation in forest area through head load, bicycle and carts for use of such produce for sale by the gatherers or the communities for livelihood.

- g. Provide necessary facilities for marketing of agricultural produce, NTFP Produce, live stock or products of live stock in the market area;
- h. Provide for settlement of all disputes between the seller and the buyer and others arising out of any kind of transaction connected with the marketing of notified



agricultural produce, NTFP Produce, live stock or product of live stock and other products and all matters ancillary thereto;

- i. Collect, maintain and disseminate information in respect of ;-*
 - (i) sale prices and movement of notified agricultural produce, live stock or products of live stock; and any other product and*
 - (ii) production, processing and storage of notified commodities.*
- j. Take all possible steps to prevent adulteration and to promote grading standardization.*
- k. Levy, recover and receive fees, subscriptions and other sums of money to which the Panchayat is entitled;*
- l. Employ necessary number of officers and servants for efficient implementation of for above rules in scheduled Areas.*
- m. Conduct the auction of notified agricultural produce, live stock o products of live stock above rules in accordance with the rules.*
- n. Ensure current weightment of notified commodities.*
- o. Regulate the entry of persons and the vehicular traffic into the market yard;*
- p. Prosecute persons violating the rules as per of the concerned department.*
- q. Institute or defend a suit , action, proceedings, application or arbitration and compromise such suit, action, proceedings, application or arbitration; and*
- r. Provide facilities, such as provision of adequate space for direct sales by a producer and assist a producer by preparing invoices and bills on his behalf when he sell his produce to a trader without employing a commission agent.*
- s. Implement the directions given by the Government from time to time in the establishment and development of markets.*

The Rules mentioned above do not give any power to manage the village markets to the Gram Sabha and hence are not in conformity with PESA. Following amendments are suggested.

AP PESA Rules, 2011

Delete sub rule(1 and 2) of Rule 8(IV) and instead insert the following

(1) The gram Sabha shall form a market committee of 10 members from amongst its members. The head of the Gram Sabha or any other competent person as decided by majority members of the Gram Sabha shall be the Chairman of the Village Market Committee.

(2) The Market Committee shall manage the village markets by whatever name called and shall perform the following functions:

(1) Specify, with prior consultation with the Gram Sabha the place of setting up such markets,

(2) No shops shall be allowed to be opened a market area without a license issued by the Market Committee. The person for applying license shall submit an application. The



Market Committee shall take approval of the Gram Sabha on the applications submitted. The Gram Sabha shall pass a resolution, within one month of receiving the application, accepting or rejecting the application and prescribing such conditions of license as it may deem necessary.

- (3) *The Market Committee may also auction the shops in the market area.*
- (4) *The Market Committee shall fix the schedule of rate of fee in respect of every such market operating within its jurisdiction in Consultation with the Gram Sabha such as;*
- i. fee for the use of, or for exposing goods for sale in such market*
 - ii. fee for the use of shops, stalls, stands, pens in such market,*
 - iii. Fee on vehicle (including motor vehicles as defined in the Motor Vehicles Act, 1939) or park animals bringing, or on persons carrying any good for sale in such market;*
 - iv. Fees on animals brought for sale into or sold in such market*
 - v. License fees on brokers, commission agents, weighman and measures practicing their calling in such market*

The schedule of rates shall be exhibited at the place of the market at the office of the Gram Sabha or any other conspicuous place in the village.

- (5) *The Gram Sabha shall also levy such penalty or cancel the license of any person acting in contravention of any of the terms of the license or this provision.*
- (6) *Other Functions of the Gram Sabha and the Market Committee:*
- a. maintain and manage the market yards.*
 - b. regulate and opening, closing and suspending of transactions in a market yard.*
 - c. Supervise the conduct of market functionaries.*
 - d. enforce the conditions of license;*
 - e. regulate the making, execution and enforcement or cancellation of agreement of sales, the weightment, delivery, payment and all other matters relating to marketing of agricultural produce, NTFP Produce, live stock or product of live stock and all matters ancillary thereto.*
 - f. Disposal of minor forest produce include local level processing value addition, transportation in forest area through head load, bicycle and carts for use of such produce for sale by the gatherers or the communities for livelihood.*
 - g. Provide necessary facilities for marketing of agricultural produce, NTFP Produce, live stock or products of live stock in the market area;*
 - h. Provide for settlement of all disputes between the seller and the buyer and others arising out of any kind of transaction connected with the marketing of notified agricultural produce, NTFP Produce, live stock or product of live stock and other products and all matters ancillary thereto;*
 - i. Collect, maintain and disseminate information in respect of ;-*
 - i. sale prices and movement of notified agricultural produce, live stock or products of live stock; and any other product and*
 - ii. production, processing and storage of notified commodities.*
 - j. Take all possible steps to prevent adulteration and to promote grading standardization.*
 - k. Levy, recover and receive fees, subscriptions and other sums of money to which the*



Panchayat is entitled;

- l. Employ necessary number of officers and servants for efficient implementation of for above rules in scheduled Areas.*
- m. Conduct the auction of notified agricultural produce, live stock o products of live stock above rules in accordance with the rules.*
- n. Ensure current weightment of notified commodities.*
- o. Regulate the entry of persons and the vehicular traffic into the market yard;*
- p. Prosecute persons violating the rules as per of the concerned department.*
- q. Institute or defend a suit, action, proceedings, application or arbitration and compromise such suit, action, proceedings, application or arbitration; and*
- r. Provide facilities, such as provision of adequate space for direct sales by a producer and assist a producer by preparing invoices and bills on his behalf when he sell his produce to a trader without employing a commission agent.*
- s. Take actions to prevent hording, black marketing, monopoly and restrictive trade practices.*
- t. Any other function as the Gram Sabha or the State Government prescribes.*

(7) In case of dispute between the Gram Sabha and the Market Committee, the Gram Panchayat shall adjudicate on the matter and in case of disputes between two or more market committees of several villages, all the Gram Sabhas of the concerned market committees shall adjudicate on the dispute in a joint meeting. The appeal from the decision of the Gram Sabha shall lie with the Gram Panchayat.

(8) The Gram Panchayat, Mandal Parishad and Zilla Parishad shall assist the Market Committee in carrying out its functions

6.5 Control over money lending

The Central PESA mandates: *“While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to exercise control over money lending to the Scheduled Tribes; [Section (4) (m) (v)]*

The A.P Panchayat Raj Act:

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 extent as may be prescribed in respect of the following matters, namely :- Exercising control over money lending to the Scheduled Tribe [Sec.242 I (1)(e)]

Rule 8 (v) Exercising control over money lending to Scheduled Tribes

No Money Lending License shall be granted to Private Money Lending Agencies in Scheduled Areas.



The Rules are incomplete as they do not state, how the license and to whom the license for money lending should be granted. Besides other aspects of control over money lenders by the Gram Sabha and protecting the poor and marginalised from exploitation at the hands of money lenders should also be included. Following amendments are suggested.

AP PESA Rules, 2011

Insert sub rule in rule 8 (V)

(2) No money lender shall operate in a village in Scheduled Areas without obtaining a license from the Gram Sabha.

(3) Every license shall be granted in such form as may be prescribed by the Gram Panchayat and on such conditions as may be prescribed by the Gram Sabha in consultation with the Gram Panchayat.

The Gram Sabha shall maintain a register of money lenders in such form and containing such particulars as may be decided by the Gram Sabha.

Gram Sabha shall decide the rate of interest on which the loan shall be advanced to any scheduled tribe. No money lender shall charge a rate of interest exceeding the rate specified by the Gram Sabha.

“Provided that the rates of interest may be revised by the Gram Sabha periodically. The revised rates shall be publicised by affixing a notice on conspicuous places in the village, forwarding a copy to the money lenders in the village and to the Gram Panchayat.”

In the state money lending is also regulated by the Andhra Pradesh Scheduled Areas Money-Lenders Regulation, 1960. The regulation of the same business is through a system of licenses; the power to grant/ refuse to grant a licence, cancel or suspend the licenses issued, has been entrusted to a 'prescribed licensing authority'.¹⁰ Therefore, there is a need to bring these legislations in conformity with PESA. Following amendments are suggested:

Andhra Pradesh Scheduled Areas Money Lenders Regulation, 1960

Insert proviso in Regulation 4(a)

“Provided that in case of Scheduled Areas, the prescribed licensing authority shall be Gram Panchayat.

Insert proviso to Regulation 4-A

“Provided that, in case the loan is advanced to a scheduled tribe, the written agreement shall also be signed by the head of the Gram Sabha of the village to which the Scheduled Tribe belong.

Insert proviso to Regulation 5

“Provided that a money lender operating in scheduled area, in case of change of place of business shall intimate the Gram Sabha of the village in which he is operating.”

Insert Proviso in Regulation 7

“provided that in case of a money lender operating in Scheduled areas, the maximum rate of interest at which the loan shall be advanced to a scheduled tribe of the village shall be decided

¹⁰ Regulation 21, Andhra Pradesh Scheduled Areas Money-Lenders Regulation, 1960



by the Gram Sabha of the village in consultation with the Gram Panchayat concerned.”

Insert clause 8 in Regulation 10

“Money lender shall submit the books of account and other record to the Gram Sabha of the village in which he is operating at least twice a year and any other information as and when required by the Gram Sabha.”

Insert clause 2 in regulation 25

“In case the money lender violates any of the conditions of the license, or has acted fraudulently or molested or physically harassed the debtor or acted immorally, the Gram Sabha may pass a resolution cancelling the license and impose such penalty on the moneylender as it deems necessary. The Gram Panchayat on receipt of the resolution of the Gram Sabha shall proceed to cancel the license and intimidate the same to the Gram Sabha. Nothing in this section debars the debtor to take recourse to other legal remedies prescribed in other legislations.”

Insert clause in Regulation 28

“The Gram Sabha may prescribe such other rules to exercise control over money lending within its jurisdiction.”

Andhra Pradesh Scheduled Areas Money Lenders Rules, 1960

Insert Rule 6A

- a) If a money lender wishes to operate in a Scheduled Area, it shall present an application in a prescribed format, to the Gram Sabha(s) of the village which fall under his area of business. The Gram Sabha shall consider the application and pass a resolution within 15 days, accepting, rejecting or modifying any conditions for conduct of business and shall send a copy of the resolution to the Gram Panchayat. The Gram Panchayat shall issue a license to the money lender in a prescribed form. License shall contain all the terms and conditions specified by the Gram Sabha in its resolution.” A Copy of the license shall also be sent to the Gram Sabha.*
- b) The license shall be renewed every year after the inspection of books of account by the Gram Sabha.*
- c) The license fee shall be as prescribed by the Gram Sabha and shall be deposited in the funds of the Gram Sabha.”*

6.6 Control over Institutions and Functionaries in all Social Sectors

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



Control over social sectors can be exercised through financial and administrative mechanisms and Gram Sabha and Panchayat at appropriate level can be accorded mechanism for control over different aspects of the social sector.

Some of the indicative social sectors are as follows:

1. Education
2. Management of Welfare Hostels
3. Health
4. Women and Child Welfare

AP Panchayat Raj Act and PESA Rules of AP identify certain social sector and vests the control over functionaries in the Mandal Parishad and Gram Panchayat as follows:

AP Panchayat Act provided that Mandal Parishad shall exercise such powers and perform such functions in such manner and to such extent as may be prescribed with regard to exercising control over functionaries in social sector. [**Section 242 I(2)(a)**]

Further, AP PESA Rules, 2011 [Rule 8 (VI)] provide elaborate provisions on exercising control over functionaries in social sector.

(I) Education

- a. *The Mandal Parishad shall be the authority to call for the administrative reports of all the Educational Institutions through the respective Gram Panchayat.*
- b. *The Mandal Parishad shall approve the budget for all the Educational Institutions in its jurisdiction by 31st may i.e. before commencement of the academic year.*
- c. *The Mandal Parishad shall monitor attendance of all the teachers working in all the Educational Institutions in its jurisdiction and shall report to the competent authority for discharging action whenever they are found to be absent or indulging in irregular practices. The competent authority shall take action under intimation to the Mandal Parishad or Gram Panchayat as the case may be.*

(II) Management of Welfare Hostels

- a. *The Mandal Parishad shall monitor the matters pertaining to diet, repairs, and over all day to day management of the welfare hostels in the jurisdiction.*
- b. *The Mandal Parishad shall call for the administrative reports from all the hostel welfare officers in its jurisdiction twice in academic year.*
- c. *The Mandal Parishad shall be recommendatory authority as far as admission of the students into the welfare hostels are concerned.*
- d. *The Mandal Parishad shall recommend suitable action against against the hostel welfare officers and other staff whenever they are found to be indulging in irregular practices to disciplinary authority concerned. The disciplinary authority concerned shall take action under intimation to the Mandal Parishad or Gram Panchayat as the case may be.*



(III) Health

The Panchayat Raj Institutions shall support, guide and review the hospitals where institute in their respective jurisdiction with Special focus on:

- a. Review and monitor the National Health Programme under Rural Health mission and all other programmes.*
- b. Review the supply of medicines and its utilization.*
- c. Review and monitor the health extension activities in rural areas.*
- d. Review and monitor the steps taken to prevent outbreak of epidemics.*
- e. Review and monitor maintenance, up keep of surroundings and construction of Medical and Health Institutions.*
- f. Right from Village Level to District level the Panchayat Raj Institutions will own the functioning of Primary Health Centres in their jurisdictions i.e. Gram Panchayats at village level, Mandal Praja Parishad at Mandal Level and Zila Parishad at District Level.*
- g. Panchayat Raj Institutions will take ownership of activities such as safe water, Hygiene and sanitation of village.*
- h. Whenever Panchayat Raj Institutions make suggestions for improvement, the Hospital authorities concerned will be responsible to send an Action taken Report to Panchayat Raj Institutions concerned. AMMs, Primary Health Officer at Gram Panchayat, Mandal and District level respectively will attend the general body meetings of Panchayat Raj Institutions concerned.*
- i. Whenever Primary Health Centre Medical Officer or AMM or District Medical and Health Officer make suggestions for improvement in Hygiene, sanitation and safe water or any matter pertaining to health, the Officers of Panchayat Raj Institutions concern will immediately respond and send an action taken report to the Medical officer or District Medical and Health Officer concerned.*
- j. The Mandal Parishad shall approve the budget of all Primary Health Centres and sub centres in its jurisdiction.*
- k. The Mandal Paishad shall call for the administrative reports of all Primary Health Centres and sub centres within a month from the commencement of the financial year.*

(IV) Women and Child Welfare

- a. The Gram Sabha shall approve the budget for Anganwadi centres.*
- b. The Mandal Parishad shall call for administrative reports from the Project officer, ICDS in its jurisdiction within a month from the commencement of the financial year.*
- c. The Gram Panchayat shall be the appointing and disciplinary authority for the Aganwadi workers i.e. helpers and workers.*



The above provisions do not vest any control over functionaries in social sector in the Gram Sabha, which is against the letter and spirit of PESA. All the control has been given to the Mandal Parishad and the Gram Panchayat. Following amendments are suggested.

AP Panchayat Raj Act, 1994

Delete section 242 I(2) and instead insert

“The Gram Sabha and Mandal Parishad shall exercise control over institutions and functionaries in social sector.”

AP PESA Rules, 2011

Insert sub rule in 8 (VI)

“The Gram Sabha shall perform all the functions, and exercise all powers mentioned in these Rules along with the Mandal Parishad.”

6.7 Control over local plans and resources for such plans including tribal sub plans

The Central PESA mandates: *“While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the power to exercise control over local plans and resources for such plans including tribal sub-plans.”* [Section 4(m)(vii)]

The AP Panchayat Act vests the above powers in the Mandal parishad. [Section 242 I (2)(b)] Further, AP PESA Rules states that the State government shall communicate district-wise TSP allocations to the District Collectors and inturn the District Collectors will communicate the Mnadal wise allocations to the Mandal Parishad. The Mandal Parishad shall inform the Gram Panchayat about their respective allocations. Further Mandal Parishad and Gram Panchayat have been given the responsibility to review the progress the TSP across all the departments in their jurisdiction and submit an administrative report to the District Collector.

The above provisions do not take into account the role of Gram Sabha in controlling local plans, resources for such plans including a tribal sub plan. Besides, the Rules, only mention about tribal sub plan and other local plans such as a working plan of the forest department are not mentioned. Thirdly, the Rules, do not devolve effective control of the Gram Sabha and Panchayat over the local plans, the powers given to the Mandal Parishad and Gram Panchayat are only recommendatory in nature and the decisions or recommendations of the Mandal Parishad and Gram Panchayat do not have a binding force on the District Collector.

Ideally the planning process should begin at the grass roots level i.e. with the Gram Sabha.

The recommendations of the Gram Sabha should be incorporated in the district plan or Tribal sub plan or any other local plan. Following amendments are suggested:

**AP Panchayat Act****Delete the provisions of Section 242I(2)(b)**

“Gram Sabha and Mandal Parishad shall exercise control over local plans, resources for such plans including tribal sub plan.”

AP PESA Rules, 2011**Insert sub Rule in Rule 8(V)**

“Local Plans formulated at district level shall not be finalised without incorporating the recommendations of the all the Gram Sabha(s) in the district. The relevant departments shall take assistance of the Gram Panchayat and Mandal Parishad in organising meetings of the Gram Sabha , collating suggestions, ensuring incorporation of recommendations in the plans.”

The Gram Panchayat shall inform the Gram Sabhas of the resources allocated for various plans to be implemented at village level. Gram Sabha shall be involved in reviewing the implementation of plans and in preparing the implementation report.”