



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

**FINAL REPORT**

**By  
ENVIRO LEGAL DEFENCE FIRM**

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## **PESA IMPLEMENTATION – SOME ESSENTIAL PREREQUISITES AND SUGGESTIONS FOR THE STATE OF CHHATTISGARH**

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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 modernization these age old institutions of self governance are fast becoming extinct<sup>1</sup>. It is a challenge to usher the tribals in the mainstream of development efforts without disturbing or destroying their cultural identity and socio- economic milieu<sup>2</sup>. 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 73<sup>rd</sup> (Amendment) Act, 1992 to the Scheduled Areas. Following the recommendations of the committee, the Parliament extended the provisions of 73<sup>rd</sup> 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.<sup>3</sup> 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

<sup>1</sup> 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.

<sup>2</sup> Ibid.

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



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

3) 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

4) Mandatory Powers to Panchayat at appropriate level

- h. Planning and management of minor water bodies.

5) 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 manufacture, 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 Chattisgarh:**

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. Chattisgarh became an independent state in 2000. The Panchayat Raj legislation applicable in Madhya Pradesh<sup>4</sup> became applicable to the state of Chhattisgarh<sup>5</sup> and make special provisions for extension of Panchayats in Scheduled Areas, a new chapter<sup>6</sup> was added to Chhattisgarh Panchayati Raj Adhiniyam, 1993 (CPRA).

However, the manner in which PESA provisions have been incorporated in CPRA, have been at variance with the letter and spirit of PESA. Besides, parallel provisions exist in other state laws governing a subject matter of 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

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<sup>4</sup> The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam-1993

<sup>5</sup> By the Madhya Pradesh Reorganization Act, 2000

<sup>6</sup> Chapter 14-A (Sections 129 A-F), Chhattisgarh Panchayat Raj Adhiniyam, 1993.



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 Orissa 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 Chattisgarh and our suggestions and recommendation on effective devolution of powers on each of the subject matters of PESA.

## **2. Adoption of PESA in Chhattisgarh Panchayati Raj Act: Analysis of Issues and Corrective Action**

### **2.1 Panchayat law and customary law, social and religious practices and traditional management of community resources**

- PESA mandates that the state Panchayat Act must be made to ensure that they are in consonance with customary law, social and religious practices and traditional management practices of community resources ( Section 4(a)):
  - a. Is there a clear understanding of *customary law* in scheduled areas? Have they been documented? If not they need to be done as early as possible and clear provision to this effect need to be added in state Panchayat law.
  - b. Are the *social and religious practices* prohibited in any manner in scheduled areas? Are they required to be documented? If yes, then a clear provision to this effect is required in the respective Panchayat law. Two clear examples could be thought of in this regard: a) use of intoxicants b) hunting. While one has been inserted in the PESA, the other is missing (although covered in FRA) Further, hunting is prohibited<sup>7</sup> as per provisions of the Wildlife (Protection) Act, 1972 with certain exceptions<sup>8</sup> that are provided within the act. A sample formulation is pasted below which can be used by State Panchayat law.
  - c. What are the traditional management practices of community resources? And what constitute community resources? A clear provision to document these in the Panchayat law. Further a clear definition (perhaps an inclusive definition of what includes community resource is required).
  - d. The changes that are required to be carried out in the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as ‘CPRA’) are as follows:

Section 129-C Powers and functions of Gram Sabha-In addition to the powers and functions contained in section 7, the Gram Sabha in scheduled areas shall also have the following powers and functions, namely:-

#### **Insertion of Section 129-C (i-a) and (i-b) in CPRA**

***“(i-a) to document the customary law, social and religious practices and traditional management of community resources in their respective jurisdiction and such customary law***

<sup>7</sup> Section 9 Wildlife (Protection) Act, 1972

<sup>8</sup> Section 11 Wildlife (Protection) Act, 1972



*shall have precedence over other practices as long as they are within the constitutional mandate on similar practice. Such documentation shall be carried out with the aid of State Tribes Research Institute or any specialized authority, institute, institution working in the field of tribal affairs within a period of two years of coming into effect of this provision.*

*(i-b) The state government shall provide aid and assistance to Gram Sabha to carry out such documentation.*

*Explanation: “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*

## **2.2 Definition of Village and its Gram Sabha:**

- Central PESA states “a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs”(Section 4(b))

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 fact has also been that most state legislation while it copies the Central PESA does not delineate the next legal or operational steps of reconstituting the village as per PESA.

Three legal measures are important here:

- i) 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.
- ii) 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 to carry 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.
- iii) Further the use of the word “community” ( Section 4(b)) 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.



The state of Chhattisgarh has formulated the definition of village and the changes required as follows:

*Section 129-A (b) CPRA states: 'Village' means a village in the scheduled areas which shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs.*

*Section 129-B Constitution of village and gram sabha-(1) the Governor shall by public notification specifies a "village" for the purposes of this chapter.*

**Following Amendments in CPRA are suggested:**

**Insert a new definition of village on the basis of above recommendation in**

**Section 129-A(b) CPRA**

***"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".***

**Add section 129-C: Procedure for Constituting the Village:**

***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 which are managing their affairs in accordance with traditions and customs shall submit a resolution to the Collector who shall then forward it to the State Government for such notification.***

***Before the resolution is forwarded to the state government the 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 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.***

- 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:

***Every "such village shall have a Gram Sabha and "recognised as such by the concerned Panchayats within which such Village Gram Sabha exists" ...***

Let us examine how CPRA has responded to this provision:



**CPRA: Gram Sabha** in a scheduled area:-

*‘Gram Sabha’ means a body consisting of persons whose names are included in the electoral rolls relating to the area of a Panchayat at the village level, or part thereof, for which it is constituted”(section 129-A (a))*

*“Ordinarily, there shall be a Gram Sabha for a “village” as defined in sub-section (1) Provided that if member of the Gram Sabha so desired, more than one Gram Sabha may be constituted in a village, in such manner as may be prescribed, and each such Gram Sabha may consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs” (Section 129-B (2))*

(Section 129-B (2)) shall be rewritten as follows:

*“Ordinarily, there shall be a Gram Sabha for a “village” as defined in sub-section (1) Provided that if member of the Gram Sabha so desire, more than one Gram Sabha may be constituted in a village, as described in Section .... and each such Gram Sabha may 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”.*

*Provided further that such Gram Sabha shall be recognized by the respective Gram Panchayat within which such Gram Sabhas exist.(Section 129-B (2))*

The Chhattisgarh Land Revenue Code 1959 too shall be required to be amended to conduct an exercise of re-grouping of survey numbers of land to form a village as is mandated under PESA and CPRA.

#### **Insertion of section 68 (bb) Chhattisgarh Land Revenue Code 1959**

*(bb) grouping of the survey numbers in a notified village in a scheduled area would be as per section 129-A (b), 129-B (1) Chhattisgarh Panchayat Raj Adhiniyam, 1993*

*Explanation- The word ‘scheduled area’ means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.*

The Chhattisgarh Land Revenue Code 1959 has formulated Rules under section 68 regarding formation of survey numbers and villages.

**Substitution of rule 11 (2) under section 68 of the Code to read as follows:**

*“(2) No division shall be allowed resulting in the formation of a village with and an area of less than 200 acres **except where the village is within a scheduled area.**”*

*Explanation- the word ‘scheduled area’ means the scheduled areas, as referred to in clause (1) of Article 244 of the Constitution of India.*



The notification under CPRA constitutes a village as per section 129-A, 129-B for the purposes of the Panchayat act covers village existing over both revenue and forest land i.e. revenue and forest villages. On the notification of a village in a scheduled area the ‘gram sabha’ for such a notified village would be constituted as per the **Chhattisgarh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998)**.

Rule 4 lays down the procedure for constituting a gram sabha for the following area:

- (a) A village or group of villages:
- (b) a hamlet or group of hamlets which included mohalla, majra, tola or para etc and
- (c) Habitation or group of habitations

Rule 4(2) provides for gram panchayat or gram sabha to pass a resolution to the effect that gram sabha is to be formed for the abovementioned areas or an application can be made to the ‘prescribed authority’. As per notification dated 23.02.1999 Collector of the concerned revenue district is the prescribed authority.

***Insertion of new rule 9(2) Chhattisgarh Scheduled areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998.***

***“ Every resolution including those for the annual working plan, selection of beneficiaries, annual budget, audit report and annual accounts and administrative report, shall be passed in the meeting which has the requisite quorum”***

***( Note that Rule 9( 2) was omitted which allowed no quorum for the fresh meeting in case the quorum was not reached in the first<sup>9</sup>.***

***Another minor but important point that is relevant in case of many Gram Sabhas in scheduled areas is as follows:***

For example, sec 7(3) of CPRA vests the gram Sabha with the power to enforce its recommendations through the Gram Panchayat. If there is more than one gram Sabhas, whose recommendation would be enforced through the gram Panchayat is not clear. This aspect needs further clarity from the state. Though there is section 90 CPRA that provides for a mechanism for resolution of dispute between Panchayats and other local authorities. Further, the state government has formulated *The Chhattisgarh Panchayat (Regulation of relations between Panchayats and Panchayat and Other Local authorities) Rules, 1994* under section 90 to provide for settlement of disputes. This provision could be used to provide a mechanism to resolve disputes between two or more gram Sabhas within the Gram Panchayat.

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<sup>9</sup> The omitted version read as follows:



Section 7(3) CPRA Powers and functions and annual meeting of Gram Sabha

The Gram Panchayat shall carry out the recommendations, if any, made by the gram sabha in regard to the matters before it under this section.

Section 49-A Other functions of Gram Panchayat

(x) to carry out the recommendations made and decisions taken by the Gram Sabha.

Insertion of (1-a) in section 90 (1) CPRA

***“(1-a) In event of any dispute arising between two or more Gram Sabha in scheduled area, the dispute would be resolved jointly by the Gram Sabha or by mutual consultation. If the Gram Sabhas are not able to resolve the dispute jointly then the dispute may be referred to the Collector or any other competent authority as may prescribed by the state government and the decision of the state government thereto shall be final.”***

Insertion of (i-a) to Rule of 3 (i) to Chhattisgarh Panchayat (Regulation of relations between Panchayats and panchayat and Other Local authorities) Rules, 1994

***“(i-a) two or more Gram Sabha within a Gram Panchayat in a scheduled area”***

The Chhattisgarh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998 mandates maintaining of an attendance register<sup>10</sup> and one register to record the minutes<sup>11</sup> the field experience<sup>12</sup> shows that the signature in the attendance register are obtained even after the meeting of the gram sabha is over at the village market to show there was requisite quorum for passing of the resolutions. Though the minutes register records that the resolutions that have been passed does not require the signatures of the members of gram sabha and only requires the number of members present to be entered as per Form 3 appended to the rules. The rules need to be amended to mandate signature of the members of gram sabha to be affixed in the minutes record after the passing of the gram sabha resolution to make it more participatory and legally appropriate.

**Amendment to Rule 14 of The Chhattisgarh Scheduled areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998**

***14. minutes record (1) minutes, recording the proceedings and decisions of every meeting of gram sabha and the signatures of number of the members present thereat shall be entered by the secretary of the gram panchayat in the minutes book in Form-3 appended to these rules and shall be confirmed at the same meeting by the person presiding thereat.***

<sup>10</sup> Rule 13, The Chhattisgarh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998

<sup>11</sup> Rule 14, The Chhattisgarh Scheduled Areas Gram Sabha (Constitution, procedure of meeting and conduct of business Rules, 1998

<sup>12</sup> Field visit to Maheshpur Panchayat and Irgawa Panchayat, Sarguja District dated 8-11<sup>th</sup> March 2011



### ***2.3 Traditions, Customs, customary resources and traditional methods of dispute resolution:***

- 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” ( as explained earlier) 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.
- The state government has enacted the Chhattisgarh Gram Nyayalaya Adhiniyam, 1996 and Chhattisgarh Gram Nyayalaya Rules, 2001 setting up rural courts to dispense speedy justice at the Gram Panchayat level. The act has no provision for involvement of gram sabha in the dispute resolution mechanism. Further, the Gram Nyayalaya constituted under the act is for a circle comprising of ten<sup>13</sup> or more Gram Panchayats. So dispute resolution is not at the village level but at the Panchayat level.

*Issues that arise are as follows:*

1. Documenting the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
2. Issuance of directives by the state government to preserve the traditional and customary ethos.
3. Power of Gram Sabha/Gram Panchayat to set an agenda bringing in issues for discussion and resolution on customs and traditions and cultural identity.

The issue of the power of Gram Panchayat to set an agenda can be rectified by necessary amendments to the CPRA. There are four mandated gram sabha in a year and the dates of the same are also known. The Gram Panchayat can formulate its own agenda and communicate the same to the District Collector and Zila Panchayat.

#### **Insertion in Section 129-D (vii-a) Chhattisgarh Panchayat Raj Adhiniyam, 1993**

***(vii-a) to set an agenda for the meeting of the Gram Sabha;***

The CPRA as per Section 129-C (i) endows upon the gram sabha the function to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution:

Substitution of section 129-C (i)

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<sup>13</sup> Section 3 Chhattisgarh Gram Nyayalaya Adhiniyam, 1996



***129-C (i) to safeguard, protect and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolution and specially those documented as per provisions of section 129-C(i-a) in their respective jurisdiction and also ensure that they are in accordance with the basic principles of the Constitution.***

***Insert in Section 129-C (i-a) Every Gram Sabha shall document the customary modes of dispute resolution and/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 .***

### **3. Powers Exclusive to Gram Sabha:**

#### **3.1 Approve the plans, programmes and projects for social and economic development:**

The Central PESA mandates three exclusive powers to the Gram Sabha: It states :” every Gram Sabha shall (i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level”

In the General Powers of the Gram Sabha in section 7 applicable to both Scheduled and Non Scheduled Areas, following provisions have been made with regard to the above provision

*“Subject to the Rules which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions:-*

- (a) to lay down the principles for identification of schemes and their priority for economic development of the village*
- (b) to approve all plans including Annual Plans, programs and projects for social and economic development before such plans, programs and projects are taken up for implementation by the Gram Panchayat.” [Section 7, CPRA]*

For strengthening the Gram Sabha in Scheduled Areas, this provisions needs to be added in Chapter XIV-A, of the Act as:

#### ***Insert subsection in Section 129-C***

- a. “Each Gram Sabha shall decide criteria for approval of every plans, programs and projects for social and economic development and implemented at the Panchayat level within which such Gram Sabha (s) exist. Provided that full and prior information on each such plan, program and project is provided by the project proponent to the Gram Sabha (s) in a language that is easily and commonly understood preferably in a vernacular language.***



***b. Every such plan, program and project shall be approved by such Gram Sabha (s) accordingly.”***

### **3.2 Identification or selection of persons as beneficiaries under the poverty alleviation and other programmes:**

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))

CPRA endows the Gram Sabha with the following power and function:

*“Subject to the Rules, which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following functions, namely -*

*To Identify and select persons as beneficiaries under poverty alleviation and other programmes”* (Section 7(1) (f))

As seen from above, the decision of the Gram Sabha regarding identification and selection of beneficiaries been made subject to Rules or orders issued by the State Government. This is inconsistent with the spirit of PESA. Secondly this function has been included among the general functions of the Gram Sabha applicable to both scheduled and non scheduled areas. It has not been included in the additional powers of the Gram Sabha in scheduled areas. In our view this should be added in the Additional Powers of Gram Sabha in Scheduled areas as follows:

#### **Insert (f-a) to section 7(1) (f) CPRA**

***7(1) (f-a): The Gram Sabha shall also decide the criteria for identifying such beneficiaries which shall be duly recognized by the Panchayat within which such Gram Sabha exists.***

### **3.3 Certification of utilisation 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))

In CPRA, with regard to certification of utilization the following provisions are mentioned:

#### **Section 7(1) -Powers and functions and annual meeting of Gram Sabha -**

*“Subject to the Rules, which the State Government may make in this behalf and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following functions, namely -*

*(e) to ascertain and certify the proper utilization by the Gram Panchayat of the funds for plans, programmes and projects referred to in clause (b)*



Insertion of (e-i) after Section 7(1) (e) as follows:

***7(e-i) to 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 (Utilization Certificate)**

Amount:

Total:

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 .....

*(If the form as given above are accepted then the provision section 7(e-i) would 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))*

In CPRA the various tiers of Panchayats have been vested with several functions relating to minor water bodies. The fact that there is no definition of minor water body in the parent legislation actually may be treated in a more creative way rather than taking the lack of definition as a negative aspect. But before that it's important to examine the provisions relating to water in the CPRA. CPRA not only vests the power to plan and manage but also the ownership of minor water bodies (beyond PESA provisions) up to a specified water area to Janpad or Zila panchayat. In addition to this, under section 49-A, Gram Panchayat (in scheduled and non-scheduled area) has also been given the power to own, plan and manage minor water bodies upto a specified



water area situated within its territorial jurisdiction. It can lease out minor water bodies upto a specified water area for the purpose of fishing and other commercial purposes and also regulate the use of minor water bodies for irrigation purposes. All these functions are performed by the Gram Panchayat with the advice of the Gram Sabha.

To implement these provisions Government of Chhattisgarh, though an enabling directive has classified the minor water bodies according to their size and vested their ownership along with the power to plan and manage, in the Panchayat at the three levels.<sup>14</sup> As mentioned earlier, currently, ponds upto 10 hectares are vested with the Gram Panchayat; between 11 to 99 hectares with the Janpad Panchayat; between 100 to 200 hectares with the Zila Panchayat and between 200 to 1000 hectares is with the Department of Fisheries. The current practice involves giving lease rights through a public notice by the Gram Panchayat to fishing community/ caste (*Kevat*) and marginalized communities such as Below Poverty Line (BPL), or the Fisheries Cooperatives at the rates fixed by the Fisheries Department. The present classification can be continued as it leaves flexibility to alter the classification depending on situations.

***However the rates may be fixed in consultation with the respective Panchayat at appropriate level to ascertain a fair price.***

The relevant provisions of CPRA are explained below:

### **Section 7**

Power and function and Annual Meeting of Gram Sabha - (1) Subject to rules, which the Government may make in the behalf, and subject to the general or special order, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely :-

(j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the constitution and other relevant laws for the time being in force;

(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;

### **Section 49-A (xii) and 49-A (xiii)**

49-A Other functions of the Gram Panchayat: - Subject to the provision of these Act and Rules made there under and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time. It shall be duty of the Gram Panchayat to –  
(xi) to plan, own and manage minor water bodies upto a specified water area situated within its territorial jurisdiction

(xii) To lease out any minor water bodies upto specified area for the purpose of fishing and commercial purpose

(xiii) To regulate the use of water of rivers, streams, minor water bodies for irrigation purpose.

The provision in CPRA that is specifically applicable to scheduled area

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<sup>14</sup> Government Order No. F-11/2/36/2002/985/M/Raipur, Dated, 24.4.2003, Fisheries Department, Government of Chhattisgarh.



**Section 129-C (iii)** to manage natural resources including land, water, forests within the area of the village in accordance with its tradition and in harmony with the provisions of the constitution and other relevant laws for the time being in force;

### **Section 129-F Powers of Janpad and Zila Panchayat**

Without prejudice to the generality of powers conferred by this act, the Janpad Panchayat or the Zila Panchayat, as the case may be, in scheduled areas shall also have the following powers, namely:

- (i) To plan, own and manage minor water bodies up to a specified water area;

CPRA provides power to impose water rate to the Gram Panchayat where it is involved in supplying water.

### **Schedule II CPRA (Other Optional taxes fees etc. to be imposed by Gram Panchayat)**

Entry 5: a water rate where arrangements are made by the gram panchayat for regular supply of water

### **The Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhiniyam, 2006**

The Act provides for farmers' participation in the management of irrigation system. Farmers Organisation has been formed such as Water Users Associations, Distributory Committees and Project Committees mainly for the regulation and maintenance of the irrigation systems such as reservoirs, bore/tube wells, tanks and wells.

### **M.P. Irrigation Act, 1931 (as applicable to Chhattisgarh)**

The act provides for constitution of an Irrigation Panchayat for every village at the discretion of the Collector in the command area of the canal. Such Panchayat shall comprise the Sarpanch and two or more members elected by the permanent members holders and occupiers of the land from among themselves. It assists the officers of Irrigation Department in detecting and preventing encroachment on canal lands, prevent damage to irrigation works and report any willful damage caused to irrigation works, assist the officers of the irrigation department in arranging for the construction of water courses, in recording and checking irrigation and in making measurements and settling disputes, collect irrigation.

### **Insertion of explanation to section 49-A (xi) CPRA**

***Explanation I: Planning of minor water bodies shall also include planning and construction of a new water body***

***Explanation II: Management of minor water body shall include all works of repair, restoration for maintenance, collection of lease money, levy of water rate, its collection and utilization as per annual plan prepared by Gram Panchayat in consultation with the respective Gram Sabha.***



## Insertion of section 129-F (v) CPRA

***129-F (v) The Gram Panchayat, Janpad Panchayat, Zila Panchayat up to a specified water area shall collect water rate levied respectively and specifically strengthen the water user associations existing( if any) within the territorial jurisdiction of the Gram Panchayat.***

## 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))*

It is important to examine how the state of Chhattisgarh has allocated this power. 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.

In scheduled areas, the CPRA does not provide for mandatory consultation of the Gram Sabha or Panchayat at Gram, Block or District level before acquisition of land for development projects or before resettling or rehabilitating persons affected by such projects.

However there are related sections in the CPRA which deserve mention.

### ***Section 113 Acquisition of land***

- (1) Where any land is required for the purpose of this act and the Panchayat is unable to acquire it by agreement, the state government may at the request of the Panchayat and on the recommendation of the Collector proceed to acquire under the provisions of Land Acquisition Act, 1894 and on payment by the Panchayat of compensation awarded under that act, and all other charges incurred by the state government in connection with the proceedings, the land shall vest in the Panchayat on whose account it has been so acquired.



- (2) The Panchayat shall not without the previous sanction of the state government transfer any land which has been acquired under sub-section (1) or divert such land to a purpose other than the purpose for which it has been acquired.

As the above provisions highlights that CPRA empowers Panchayats (in both scheduled and non scheduled areas) to acquire land for carrying out functions as prescribed under the act, in this case too, it does not provide for a prior consultation with the Gram Sabha.

In light of the above gaps, clearly, the following corrective measures are required:

First, the term “Consultation needs to be defined on the lines of “Free, Prior and Informed Consent (FPIC) affirmed by international law and standards<sup>15</sup>”

Second, the CPRA should be amended to include a provision which mandates consultation with the Gram Sabha mandatory in case of acquisition of land in Scheduled Areas and also before any resettlement or rehabilitation that takes place in such scheduled areas.

**Insertion of section 129-C (viii) in CPRA:**

***Insert Section 129-C (viii) - “Prior consultation with the Gram Sabha is mandatory in case of acquisition of land and also before finalization of any resettlement or rehabilitation scheme for displaced persons in such scheduled areas.***

***Provided that in case of acquisition in Scheduled areas, the Collector shall convene an extraordinary meeting of the Gram Sabha as per section 6 of Chhattisgarh Panchayat Raj Adhiniyam, 1993 and Rule 6 Chhattisgarh Scheduled areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business Rules, 1998 and carry out a consultation process with the Gram Sabha on the proposed acquisition.***

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

***Insert proviso to Section 129-C (viii) “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.***

***Insert Explanation to Section 129-C (viii)-: ““For the purposes of this Act, Consultation with its cognate and grammatical variations shall mean publicizing the acquisition proposal by***

<sup>15</sup> General Recommendation XXIII of the United Nations (UN) Committee on the Elimination of Racial Discrimination, the UN General Assembly’s Plan of Action for the 2nd International Decade of the World’s Indigenous Peoples, International Labor Organization Convention 169 and many other international instruments recognize FPIC as a right of Indigenous Peoples and obligate states (countries) to uphold this right.



*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.”*

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

#### **Land Acquisition Act. 1894 as applicable in Chhattisgarh:**

**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 -, “provided that in case of acquisition in Scheduled areas, the Collector shall convene an extra-ordinary meeting of the Gram Sabha as per section 6 of Chhattisgarh Panchayat Raj Adhiniyam, 1993 and Rule 6 Chhattisgarh Scheduled areas Gram Sabha (Constitution, Procedure of Meeting and Conduct of Business Rules, 1998, and carry out a consultation process with the Gram Sabha on the proposed acquisition.**

As an alternative to the amendments to Land Acquisition Act, the above provisions are being included in the CPRA.

Fourthly, since, as of now, there is no legislation on resettlement and rehabilitation therefore, to implement the provisions of PESA, the resettlement and rehabilitation policy of Chhattisgarh needs to be given legal sanctity.

**Insert Section 5-B – “Rehabilitation and Resettlement in Scheduled Areas shall be carried out as per the provisions of An ideal Rehabilitation Policy of state of Chhattisgarh 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 also 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))*

There are no such provisions under CPRA, 1993 regarding minor minerals. Also minor minerals have not been defined either.



Section 7(1)(j-ii) of CPRA provides for a generic provision as follows: *Gram Sabha “to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution other relevant laws in force for the time being in force.”*

As stated earlier, in CPRA, there is no specific provision regarding taking mandatory recommendation of the Gram Sabha or the Panchayat at appropriate level prior to the grant of prospecting licence or mining lease for minor minerals or for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. However, the Act gives the power to the Gram Sabha to manage its land resources among others. This would per se include minerals including minor minerals.<sup>16</sup>

The Government of Chhattisgarh has framed Chhattisgarh Minor Minerals Rules, 1996 (hereinafter Rules) for the regulation of matters such as grant and renewal of quarry leases and quarry permit for minor minerals, restrictions on undertaking mining operations, period of lease, assessment of royalty and disbursement of revenue from quarrying of minor minerals between Janpad Panchayat and Gram Panchayat. Some of the relevant rules are given below for ready reference.

***Rule 3 Exemptions-****Nothing in these rules shall apply to ,the extraction of clay or sand, by a hereditary kumhar, a member of a Scheduled Caste or a member of a Scheduled Tribe or a Cooperative Society of such kumhars or members of Scheduled Castes or members of Scheduled Tribes for preparing tiles, pots or bricks by traditional means, but not by the process of manufacture in kilns or by any mechanical means, from the area that the Gram Panchayats may decide and earmark within their respective Panchayat area for extraction of clay and sand :*

*Provided that no extraction shall be made from any public place or 50 meter from such public place*

***Rule 7: Power to grant quarry permit***

*Quarries of annual value upto Rs. 2, 50,000/- (Rs. Two Lakh fifty thousand); above Rs. 2, 50, 000/- (Rs. Two Lakh fifty thousand) but upto Rs.5,00,000/- (Rs. Five Lakh) and above Rs. 5,00,000/- (Rs. Five Lakh)and upto Rs. 10,00,000(-Ten Lakh) in respect of minerals specified in Schedule II except stone quarries for crusher and clay quarries for tiles and bricks in chimney bhatta, shall for regulating the grant and renewal or quarry permit and all purposes connected therewith including collection of royalty, stand transferred to the respective Gram Panchayats/Janpad Panchayats and Zila Panchayats respectively. Quarry permits shall be granted and renewed by the respective Panchayat, after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated.*

*Explanation- For purpose of assessing the annual value of any quarry of mineral specified in Schedule II, if the quarry is a trade or royalty quarry, the average annual bid amount of the years 1992-93, 1993-94 and 1994-95 shall be taken into consideration and in cases of quarries granted as quarry leases average annual royalty for the years 1992, 1993 and 1994 shall be taken into consideration. This assessment of value is for the purpose of transfer/sanctioning*

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<sup>16</sup> Land as defined in Land Acquisition Act, 1894



power of quarries to respective Zila, Janpad and Gram Panchayats at the commencement of these Rules.

**Rule 8- Procedure for demarcation of new quarries.-**

Panchayat to demarcate and declare new quarry in respect of Mineral specified in schedule II in consultation with the Collector of the district.

**Rule 18: Disposal of applications for the grant or renewal of quarry lease**

(1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Panchayat concerned of the district and Collectorate of the district concerned.

(2) The Sanctioning Authority after making such enquiries as he deems fit, may sanction the grant or renewal of a quarry lease or refuse to sanction it within one year from the date of receipt of the application for the grant of quarry lease or for the renewal application before the expiry of quarry lease already sanctioned. Otherwise the application shall be deemed to have been refused:

Provided that no quarry lease for new area shall be sanctioned without obtaining opinion of the respective Gram Panchayat

(3) Notwithstanding anything contained in sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh applications in this behalf may be made according to the procedure laid down under these rules.

(4) Where an applicant for grant or renewal of a quarry lease, dies before the sanction order is passed it will be deemed to have been filed by his heir and if the applicant dies after the sanction order of grant or renewal but before execution of lease deed it will be deemed to have been granted or renewed to the legal heir of the applicant.

**Rule 30- Conditions of quarry lease-**

(1) Every quarry lease shall be subject to the following conditions:-

(a) The lessee shall pay, for every year except for the first year of the lease, yearly dead rent at the rates specified in the Schedule IV in the advance for the whole year, on or before the 20th day of the first month of the year;

**Rule 36 Quarry Permit**

Quarry permit shall be issued by Zila/Janpad and Gram Panchayat as specified in rule 7 and rule 8.

**Rule 37 Application for quarry permit**

An application for grant or renewal of quarry permit shall be made to the concerned Zila Panchayat, Janpad Panchayat and Gram Panchayat as the case maybe in Form XV and shall contain the following particulars:

- (i) Name, profession, caste, educational qualification, financial status and address. In case of co-operatives/association, bylaws, list of members and their caste, financial status of individual member and their educational qualification
- (ii) Name of the mineral for which permit is required



- (iii) Description of the land marked on a village map with khasra pancshala from which the mineral is to be removed.
- (iv) Purpose for which the mineral is to be used;
- (v) Consent of the owner of land, if the land is a private land;
- (vi) Period for which the permit is required;
- (vii) An application fee of rupees Twenty Five (Rs. 25.00) to be deposited in the manner as may be prescribed by the respective authority and the cash receipt thereof shall be enclosed with the application.

**Rule 38- Disposal of application for quarry permit**

(1) On receipt of an application for the grant of quarry permit its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Panchayat concerned of the district and Collectorate of the district concerned. It shall be disposed of by the Sanctioning Authority within sixty days from the date of its receipt. However, a Gram Panchayat shall obtain prior approval of its Gram Sabha before final disposal of the application.

(2) The Sanctioning Authority shall grant quarry permit in Form XVI for extraction and removal from any specified quarry, and mineral under any one permit. The agreement shall be executed and registered in Form XVII within 30 days of sanction and if no such agreement is executed within the aforesaid period, the order of sanction shall be deemed to be revoked. The transit pass in Form IX shall be issued after deposition of royalty for the quantity of mineral intended to be transported every time. The royalty shall be calculated at the rates specified in Schedule III. The applicant shall deposit the amount of security which he may be directed to deposit by the authority before such execution of agreement.

(3) If any application is rejected, the Sanctioning Authority shall inform the applicant, stating the reasons of such rejection.

(4) **Preferential Rights.** - A Quarry permit shall be granted only to the residents of the Panchayat where the quarry is located in the following order of preference

(a) Co-operative society/association of Scheduled Tribe/Scheduled Caste/Backward Classes Educated unemployed youths or individuals where more than 50 per cent of the members belong to the concerned category and the chairman of the society belongs to the concerned category and also where the executive committee have representation in the ratio of the members of the concerned category and hail from below poverty line unemployed youth belonging to Scheduled Tribe/Scheduled Caste/Backward Classes in that order;

(b) An educated unemployed youth belonging to below poverty line families listed in the district rural development agency

(c) any other person belonging to below poverty line families listed in the district development agency

(d) any other applicant



*Provided that exclusive co-operative society/ association of women or an individual woman shall have the preferential right over other applicants in the same order as provided in clauses (i), (ii), (iii) and (iv)*

### **Rule 53: Penalty for un-authorized extraction and transportation**

*(1) Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.*

*(2) Whenever any person is found extracting or transporting mineral in contravention of the provisions of these rules the Collector/Additional Collector/Joint Director/Deputy Director/Mining Officer/Assistant Mining Officer, or any Officer authorised by him or Zila/Janpad/Gram Panchayat may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence.*

*(3) The officer seizing illegally extracted or transported mineral or its product, tools, equipments and vehicles shall give a receipt of the same to the person from whose possession such things were so seized and shall make report to the Magistrate having Jurisdiction to try such offence.*

### **Rule 56 Deposition of revenue**

*(1) All revenue from the minor mineral quarries granted by the Panchayats including dead rent , royalty, surface rent, interest and any other penalty shall be deposited in the fund of respective Panchayats*

*(2) Except area granted by the Gram Panchayat, revenue such as Dead Rent, Royalty, Surface Rent, interest and any other Penalty from other quarries of Minor Minerals situated within the area of Panchayats shall first be deposited in the Zila Panchayat Nidhi of the area concerned. It shall then be distributed according to rules governing the District Panchayat Nidhi and as per procedure prescribed by the state government.*

*(3) All revenue from Minor Minerals such as Dead rent, Royalty, Surface Rent, interest and any other penalties recoverable within the area of Corporation, Municipalities, Special Area or Nagar Panchayats shall be deposited in the respective Local Bodies.*

### **Rule 68 Permission for removal of minor minerals for Central and state Government and their undertakings**

*(1) (i) The concerned Panchayat shall grant permission for extraction, removal and transportation of any minor mineral from any specified quarry or land which may be required for the works of any department and undertaking of the Central Government or state government. Such permission shall only be granted to either the concerned departmental authority or its authorised contractor on furnishing proof of award of contract.*



- (ii) *The Collector/Additional Collector grant permission for extraction, removal and transportation of any minor mineral from any specified quarry or land only from the areas of corporation, Municipalities, Nagar Panchayat and Special area which may be required for the works of any department and undertaking of the Central Government or state government. Such permission shall only be granted to either the concerned departmental authority or its authorised contractor on furnishing proof of award of contract.*
- (2) *Such permission shall not exceed duration of 30 days and a quantity of 500 cubic meter at any one time.*
- (3) *Such permission shall only be granted on payment in advance of royalty calculated at the rates specified in schedule III. The transit pass in Form IX then shall be issued.*
- (4) *The permit shall be governed by the following conditions:*
- (a) *The permit holder shall maintain complete and correct account of the mineral removed and transported from the area.*
- (b) *The permit holder shall allow any officer authorised by the Zila/Janpad/Gram Panchayat in respect of the permission given by the Collector/Deputy Director/Mining Officer/Assistant Mining Officer/ Mining Inspector, to inspect ct quarrying operation and verify the accounts.*
- (c) *No sooner the permitted quantity is transported within the time period of 30 days or earlier, duplicates of all transit pass, such unused transit passes together with a complete statement of the quantities duly certified by the officer of the concerned department shall be furnished to the Sanctioning authority.*

To correct the aforementioned anomalies following recommendations are made:

There are three requirements as per PESA on the issue of minor minerals

- (i) Recommendation of Gram Sabha or Panchayat at appropriate level (hereinafter referred to as 'PAL') before grant of prospecting licence for minor mineral
- (ii) Recommendation of Gram Sabha or PAL before grant of mining lease for minor minerals.
- (iii) Recommendation of Gram Sabha or PAL before grant of concession for the exploitation of minor minerals by auction.

As mentioned before, PESA only makes recommendation of the Gram Sabha or the Panchayat at appropriate level mandatory, prior to the grant of prospecting licence or mining lease for minor minerals or for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. However, in law, recommendation is in the nature of opinion or view and is not binding on the party. Therefore, in order to protect the interest and resources of the Gram Sabha, recommendation may be replaced with **“Free and Prior Informed Consent”**

Besides, the power of free and prior informed consent in case of grant of mining leases shall be given to Gram Sabha and the provision is included in the section on Additional powers of the Gram Sabha in Scheduled Areas.

Thirdly, appropriate amendments may be made in Chhattisgarh Minor Minerals Rules, 1996 as per the provisions of PESA and CPRA as follows:



### Suggested Amendments:.

#### Insertion to Section 7 (j-v) Chhattisgarh Panchayat Raj Adhiniyam, 1993

*“to grant prior approval before grant or renewal of prospecting license quarry lease, quarry permit for minerals specified in Schedule I and Schedule II of the Chhattisgarh Minor Mineral Rules, 1996”*

#### Insertion of Section 129 (vi-a) Chhattisgarh Panchayat Raj Adhiniyam, 1993

*“(vi-a) to grant prior approval before grant or renewal of prospecting license, quarry lease, quarry permit for minerals specified in Schedule I and Schedule II of the Chhattisgarh Minor Mineral Rules, 1996”*

#### Chhattisgarh Minor Mineral Rules, 1996

#### Insertion of Rule 2 (xxiii-a) in Chhattisgarh Minor Mineral Rules, 1996

*“Prospecting operations” means any operations undertaken for the purpose of exploring, locating or proving minor mineral deposits.”*

#### Insertion of Rule (xxii-b)

*“Prospecting license” means licence granted for the purpose of undertaking prospecting operations for minerals specified in schedule I and Schedule II.*

#### Amendment to Rule 4 Chhattisgarh Minor Mineral Rules, 1996

*Rule 4 Prohibition of mining operation without a quarry present or quarry lease, **prospecting operation without a prospecting license***

*(1) No person shall undertake any mining operation **or prospecting operation** in any area except under and in accordance with the terms and conditions of a quarry permit or quarry lease **or ‘prospecting license’** granted under these Rules*

*(2)No quarry permit or quarry lease **or ‘prospecting license’** shall be grant other than in accordance with provisions of the Rules.*

#### Insertion of a proviso to Rule 6

*“Provided that quarry lease shall be granted or renewed by the respective Panchayat, after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated.”*



### Insertion of (sub-rule 1) to Rule 9

*“A certificate of ‘prior approval’ to be obtained from the Gram Sabha of the Panchayat in which the quarry area is situated”*

### Insertion of sub rule (4) & (5) to Rule 56

*(4) A percentage of the revenue collected from the minor mineral quarries granted by state government including dead rent, royalty, surface rent, interest and any other penalty shall be deposited in the fund of Gram Sabha within whose jurisdiction the area pertaining to the quarry lease is located.*

*(5) The State Government shall by notification determine the percentage of the revenue to be deposited in the fund of the Gram Sabha.*

### Insertion of Chapter II-A Powers to Grant Prospecting License

*(5-A) Power to grant prospecting license-Prospecting License in respect of minerals specified in Schedule-II and Schedule-II shall be granted and renewed by the competent authority, provided that prior approval of the Gram Sabha of the Panchayat is obtained. The area within whose jurisdiction the area pertaining to the prospecting license is located.*

*Explanation: - for the purpose of obtaining prior approval of the Gram Sabha the procedure prescribed in Chhattisgarh Panchayat Raj Adhiniyam, 1993 may be followed.*

### Insertion of Chapter III-A

*“(8-i) Application for prospecting license*

*An application for grant or renewal of prospecting license shall be made in Form I of Rule 9 in triplicate for the minerals specified in Schedule I and Schedule II. The procedure specified for grant of quarry lease in Chapter IV Rule 9,10,11,13,14,15,17,18,19,20,21 would be followed mutatis mutandis for grant of license for prospecting of minerals specified in Schedule I and Schedule II. The State Government may by notification do away with certain conditions as prescribed in Chapter-IV in its application to prospecting license.*

*(8-ii) Minimum Area for grant of Concession of prospecting license*

*The minimum area for grant of prospecting license for minor mineral shall be 0.1 sq. km (10 hectares) provided that for reasons to be recorded in writing, a state government in respect of any area and any minor mineral may notify a minimum area different than the area specified in the sub-section.*

*(8-iii) Period of grant and extension of prospecting license*

*A prospecting license shall be granted for a period not less than two years and not more*



*than three years and may be extended on application by the license in respect of such part of the area or may be specified.”*

## **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)).*”

#### **Chhattisgarh Panchayat Raj Adhiniyam, 1993**

The CPRA does not contain this provision in any manner. However there are general provisions of CPRA

#### **Section 49 (9) functions of gram Panchayat**

*Regulating and control over entertainment shows, shops, eating houses and vendors of drinks, sweet meats, fruits, milk and of other similar articles*

#### **Insertion of Section 129 (vi-b) CPRA**

*To enforce prohibition on sale and consumption of intoxicant*  
*Explanation – for the purpose of this section “intoxicant” would have the same meaning as provided in the respective state excise law or any other dealing with this subject matter with all its cognate and grammatical variations.*

#### **Insertion of Section 129 (vi-c) CPRA**

*To regulate or restrict the sale and consumption of any intoxicant*

The non-inclusion of powers as required under PESA to some extent is redressed in the subject matter law i.e. the law on Excise in Chhattisgarh

#### **Chhattisgarh Excise Act, 1915**

Chhattisgarh Excise Act, 1915 has been amended vide Chhattisgarh Excise (2nd Amendment) Act of 1997 to include special provisions regarding sale and manufacture of intoxicants and the power of Gram Sabha in Scheduled Area vis-à-vis the same.



The Chhattisgarh Excise Act, 1915 defines “Intoxicants” to mean any liquor or intoxicating drug. The Act further explains the words “Liquor” as meaning intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act. Further “intoxicating drug” means – (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis sativa*), including all forms known as “Bhang”, “sindhi” or “ganja”; (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and (iv) any other intoxicating or narcotic substance which the State Government may, by notification, declare to be an intoxicating drug not being narcotic drug as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (No. 61 of 1985)

What is clear from the above is that the terms intoxicants covers within itself a variety of substances and processes and the law has defined the ambit of both the substance as well as the processes. Note that PESA merely mentions the word intoxicant without defining it and then quickly moves to its control and prohibition etc.

### **Section 61-E Power of Gram Sabha to regulated and prohibit manufacture, sale etc. of intoxicants**

(1) The Gram Sabha *along with the Panchayat at appropriate level* shall have the power to regulate and prohibit manufacture, possession, transport, sale and consumption of intoxicants within its territorial jurisdiction

Provided that an order of prohibition passed by the Gram Sabha shall not apply to a manufactory engaged in the manufacture of any intoxicant and established prior to coming into force of the provision of this chapter

- (1) No new manufactory for manufacture of any intoxicants shall be established and no new outlets for sale of intoxicants in any area comprised within the territorial jurisdiction of the gram sabha *and its respective panchayat at the village, block and district level* shall be opened by state government without the consent or permission of the gram sabha
- (2) If a gram sabha prohibits manufacture, possession, sale and consumption of any intoxicants in its area, the following consequences shall follow:
  - (a) no new manufactory of intoxicants shall be established within the jurisdiction of the gram sabha
  - (b) no new outlets for sale of any intoxicants shall be opened, and the existing outlets, if any, shall be closed with effect from the first day of the next financial year immediately following the issue of order of prohibition
  - (c) No person shall manufacture, possess, transport, sell or consume any intoxicant within the Gram Sabha area.

### **Insertion of section 61-G Chhattisgarh Excise Act, 1915**

***Deposition of Revenue – 50% of the revenue generated from excise cable article and any other penalty shall be deposited in the fund of the Gram Sabha at the end of each financial year.***

What is not clear from the above is the role of the Panchayat at appropriate level which is also to be integrated in the power structure. One suggestion is the concurrence of the Panchayat at the



appropriate level before any manufacture, possession, transport, sale and consumption of intoxicants is carried out within its territorial jurisdiction. The same has been added as highlights.

## 6.2 Ownership of Minor Forest Produce

Regarding Minor Forest Produce (hereinafter referred to as 'MFP'), 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))*

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 **Gram Panchayat** and **the Gram Sabha** are endowed specifically with the ownership of minor forest produce (hereinafter referred to as 'MFP'); ( Section 4(m) (ii))

Besides ownership of MFP other aspects like access and use should also be mentioned.

CPRA postulates that subject to rules and orders that the state government might frame, the gram sabha has the power to manage natural resources including forests within the area of the village. So the CPRA too is silent on the issue of ownership of MFP and devolution of the right of ownership to gram sabha. The only interpretation on the reading of the provision is that the gram sabha has been endowed with the power to manage forest resource among others which may include MFP. This has further been qualified where it has been made subject to other “relevant laws” for the time being in force.<sup>17</sup>

MFP in the state has been classified into two categories namely nationalised and non-nationalised. Nationalised MFP is that forest produce where the state monopoly has been created for purchase and trade. Nationalised MFP includes forest produce such as Tendu leaves, Sal Seed, Harra, Gums of Kullu, Dhawda, Khair and Babool. The purchase and trade of Tendu leaves was nationalised by *Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam-1964*. The purchase and trade of Sal Seed<sup>18</sup>, Harra<sup>19</sup>, Gums of Kullu, Dhawda, Khair and Babool<sup>20</sup> known as 'specified forest produce' were nationalised by *Chhattisgarh Vanupaj (Vyapar Viniyam) Adhiniyam, 1969*. This act only defines 'specified forest produce' in the context of the Act. The Act provides for appointment<sup>21</sup> of an 'agent' for carrying out functions of purchase and trade of 'specified forest produce' (Nationalised MFP) on behalf of the state government. The state government can appoint a co-operative society, gram Panchayat or a Janpad Panchayat as an agent for carrying out the functions relating to trade of nationalised MFP. The Chhattisgarh State Minor Forest Produce (Trading and Development) Co-operative Federation Limited (herein after referred to as 'Federation') has been appointed as an agent of the state government to carry out the trade in nationalised MFP. It comprises a three tier cooperative structure constituting a state level Apex body, 32 Forest Produce Co-Operative District Unions and 913 Primary Forest

<sup>17</sup> Section 129-C, CPRA

<sup>18</sup> Notification dated 9.12.1975 (under Section 1(3) Chhattisgarh Vanupaj (Vyapar Viniyam) Adhiniyam, 1969)

<sup>19</sup> notification dated 21.6.1969(under Section 1(3) Chhattisgarh Vanupaj (Vyapar Viniyam) Adhiniyam, 1969)

<sup>20</sup> notification dated 21.6.1969(under Section 1(3) Chhattisgarh Vanupaj (Vyapar Viniyam) Adhiniyam, 1969)

<sup>21</sup> Section 4 (under Section 1(3) Chhattisgarh Vanupaj (Vyapar Viniyam) Adhiniyam, 1969)



Produce Co-operative Societies. The Federation is responsible for all aspects relating to management, development and trade of nationalised and non-nationalised minor forest produce in the state. The collection of MFP is done by the primary cooperative societies which comprises actual collectors of MFP who are usually tribals and they are responsible for collection at collection centre level. The MFP that is collected and purchased is transported or stored by Forest produce co-operative district unions at the Forest Division level. The Divisional Forest Officer (DFO) is the ex-officio Managing Director, District Union. He ensures the collection of produce, storage and payment of collection wages to the collectors through primary co-operative societies. The trading of MFP is done by the Federation through tenders and auctions. After the entire expenses are met, 20% of the revenue generated is invested in afforestation activity under the supervision of the forest department and the rest of the amount is distributed as incentives to the primary collectors. The price of the purchased MFP is to be determined by the state government in consultation with the advisory committee that is constituted every year for this purpose. The collection and trade in non-nationalised MFP is required to be conducted through the Federation.<sup>22</sup> There is no price fixation committee for the non-nationalized MFP.

Transportation of MFP is governed by Chhattisgarh Transit Policy, 2001 and The Chhattisgarh Transit (Forest Produce) Rules, 2001. The rules exempt the requirement of transit permit/pass for transportation of MFP<sup>23</sup> from the forests to the local market or to the collection centre or for bonafide domestic consumption.

#### **Insertion of Section 129-C (vi-d) CPRA Power and function of Gram Sabha**

*129-C (vi-d): To own and have right of access to collect, use and dispose minor forest produce within and outside the village boundaries where they have had traditional access.*

*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 except the inclusion of bamboo.*

#### **Insertion of Section 129-d (vii-a) CPRA-Functions of Gram Panchayat**

*129-d (vii-a) to facilitate the integrated management and supervision of collection, storage, processing, marketing, value addition of minor forest produce through the Gram Sabha*

*Provided 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.*

<sup>22</sup> Important orders/direction on scheduled areas: Schedule caste and schedule Tribes Welfare Department, State of MP

<sup>23</sup> Rule 3(d)



### **Insertion to Rule 3 proviso (d) Chhattisgarh Transit (Forest Produce) Rules, 2001**

*(d) Of minor forest produce from 'forest land' to the local market or to the collection centre or for bonafide domestic consumption.*

*Explanation – The term 'forest land' in this section means land of any description falling within any forest area and includes unclassified forests, undemarcated forest, existing or deemed forest, protect forest, reserved forest, sanctuaries and National Park.*

### **Insertion to section (1-a) Chhattisgarh Van Upaj (Vyapar Viniyaman) Adhiniyam-1969**

*(1-a) the act would exclude from its operation scheduled areas of the state*

*Explanation- The word 'scheduled area' means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.*

### **Insertion to section (1-a) Chhattisgarh Tendu Patta (Vyapar Viniyaman) Adhiniyam-1964**

*(1-a) the act would exclude from its operation scheduled areas of the state*

*Explanation- The word 'scheduled area' means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.*

## **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;”

The CPRA has not made any special provision regarding the same. The only enabling provision is in the Chhattisgarh land revenue Code, 1959

### **Section 170-B (2-A) Chhattisgarh Land Revenue Code 1959**

*(2-A) If a Gram Sabha in the scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that person to whom it originally belonged and if that person is dead to his legal heirs;*

*Provided that the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.*



## **Insertion of section 129-C (vii-e) CPRA**

***129(vii-a) To have the authority to prevent any unlawful alienation of land as well restore unlawfully alienated lands belonging to the scheduled tribe in a scheduled area as well as any land within a scheduled area to that person to whom it originally belonged and if that person is dead to his legal heirs.***

### **6.4 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;*

*There are two issues that require analysis. First is the identification of the social sectors and functionaries within those social sectors and secondly, prescribing various types of control over those social sectors. 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. Employment*
- 2. Education*
- 3. Health*
- 4. Rural water supply and sanitation*
- 5. Women and child development*

***The CPRA in their various provisions relating to institutions of social sector has provided as follows:***

#### ***Section 7 (1) (j-i) power and function and annual meeting of Gram Sabha***

*(1) Subject to the rules, which the state government may make in this behalf, and subject to the general or special orders, as may be issued by the state government from time to time, the gram sabha shall have the following powers and functions, namely:-*

*To exercise control over institutions and functionaries in social sectors transferred to or appointed by gram Panchayat through that Panchayat*

#### ***Section 49-A (xiv) other functions of Gram Panchayat***

*To exercise control over institutions and functionaries in social sectors transferred to or appointed by gram Panchayat; and*

#### ***Section 52 (xii) functions of Zila Panchayat***

*Administer and control the employees appointed and posted in Panchayats including staff transferred by the state government to the panchayats*



*Explanation-the administration and control of the staff transferred by the state government shall include the exercise of such power as may be defined by the state government from time to time by special or general order;*

### **Section 129-F Powers of Janpad and Zila Panchayat**

*(iii)To exercise control over institutions and functionaries in social sectors transferred to them*

There is a need to have clarity on the powers and sectors of social sector where the Panchayat at appropriate level is able to exercise power.

### **Insertion section 129-F (iii-a) CPRA**

***“To call for the administrative reports of all the aided educational institutions through the respective gram Panchayat.”***

### **Insertion of 129-F (iii-b) CPRA**

***129-F (iii-b) to monitor national health programmes, review the supply of medicines to primary health centers and government hospitals, monitor the health extension in rural areas”***

***129-F (iii-c) To call for the administrative reports of all the primary health centers for each financial year through the respective gram Panchayat”***

***129-F(iii-d) To call for the administrative reports of all anganwadi workers for each financial year through the respective gram Panchayat***

***129-F( iii-e) To call for any administrative report of any other social sector program which is being implemented at the respective Gram Sabha and the Panchayat at appropriate level.***

## **6.5 Management of Village Market**

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))*

The power to manage has concomitant power of regulation an establishment which has not been provided in PESA and it is imperative to include these powers for effective management of village markets by Gram Sabha and PAL.



## **Amendment of section 4 (m) (iv) Central PESA**

*The power to establish, regulate, manage village markets by whatever name called;*

Under the CPRA: There are various provisions that relate to market and fairs as follows:

### **Section 49 functions of Gram Panchayat**

*It shall be the duty of a gram Panchayat in so far as the Gram Panchayat funds allows to perform within its area the following functions:-*

*(18) Establishment, management and regulation of markets and melas other than public markets and public melas*

### **Section 50 Functions of Janpad Panchayat**

*(1) Subject to the provisions of this act and rules made thereunder, and subject to general and special orders, as may be issued by the state government, from time to time, it shall be the duty of a Janpad Panchayat so far as the Janpad Panchayat funds allows to make reasonable provisions in the block for the following matters:-*

*(e) management of public markets, public melas and exhibitions; and*

### **Section 58 Regulation of markets and melas**

*(1) Save as provided in the Chhattisgarh Krishi Upaj mandi Adhiniyam, 1972 9No. 24 of 1973), no person except Gram Panchayat shall within the gram Panchayat area set up, establish or use any place for the purpose of a market or a mela*

*Provided that the state government, may by notification, declare any market or mela to be public market or public mela and the public market or public mela, as the case maybe, so declared shall vest in the Janpad Panchayat*

*(2) The state government may make rules to regulate the market or the mela specified in sub-section (1)*

### **Regulation of Markets and Melas within the Gram Panchayat Areas Rules, 1994**

*The rules formulated under section 58 is to lay down procedure and process to be followed by the gram Panchayat to establish and manage markets within the gram Panchayat area for the convenience of the people of the area.*

### **Section 80 Leases of market fee etc**

*The Panchayat may by public auction in the prescribed manner, lease the collection of any fee specified in schedule III*

### **Gram Panchayat and Janpad Panchayat (Lease of Collection of fees) Rules, 1995**

*The collection of fees specified in schedule III of CPRA can be leased out as per section 80 CPRA, the rules formulated under the section lay down the procedure for conducting auction for collection of fees. The entries in the schedule refer to imposition of fees on persons who put out their goods for sale in any market under the control of the gram Panchayat.*



### ***Section 129-C powers and functions of Gram Sabha***

*In addition to the powers and functions contained in section 7, the gram Sabha in scheduled areas shall also have the following powers and functions namely:-*

***(v) To manage village markets and melas including cattle fairs, by whatever name called, through the gram Panchayat***

### ***Section 129-D Functions of Gram Panchayat***

***(ii) to manage village markets and melas including cattle fairs, by whatever name called,***

#### ***Schedule I***

##### ***Obligatory taxes to be imposed by Gram Panchayats***

***5. Market fees on persons exposing goods for sale in any market or at any place or any building or structure therein belonging to or under the control of the gram Panchayat***

***6.a fees on the registration of cattle sold in any market or in any place belonging to or under the control of the gram Panchayat.***

#### ***Schedule II***

##### ***Other optional taxes fees etc. to be imposed by Gram Panchayat***

***7.a tax on persons carrying on the profession of purchaser, agent, commission agent, weighman or a measure within the meaning of Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 (No. 24 of 1973) in the area of Gram Panchayat excluding the area of mandi.***

#### ***Schedule III***

##### ***Lease of collection of fees by gram Panchayat***

***1.a fees on persons exposing goods for sale in any market or any place belonging to or under the control of Gram Panchayat or for the use of any building or structure therein***

***2.A fees on registration of cattle sold in any market or place belonging to it under the control of the Gram Panchayat.***

### ***Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972***

This act does not distinguish between Scheduled and Non Scheduled Areas and vests the power to regulate markets of notified agricultural produce in a Market Committee formed under the Act. The agricultural produce that is included in Schedule I of the act is notified agricultural produce. The markets are also set up under this act itself.<sup>24</sup> This committee performs several functions to manage market areas such as leasing of shops, giving license to persons who desire to operate in the market area, controlling market operations, resolution of disputes, and regulation of funds collected from the market operations. It is to be noted that the operation of

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<sup>24</sup> Section 3



this Act overrides the power of the Gram Panchayat to set up markets or *melas* in the Panchayat area as per section 58 of CPRA. The provisions of this Act are in conflict with the spirit of PESA which vests unfettered powers in the Gram Sabha and PAL to manage village markets.

The formulations are given below:

#### **Amendment and insertion to section 50 (1) (e) CPRA**

***50 (1) (e) management of public markets, public melas and exhibitions excluding the management of public markets, public melas and exhibitions in scheduled areas***

#### **Amendment to section 58 CPRA**

##### ***Section 58 Regulation of markets and melas***

*(1) Save as provided in the Chhattisgarh Krishi Upaj mandi Adhiniyam, 1972 9No. 24 of 1973), no person except Gram Panchayat **in consultation with Gram Sabha** shall within the gram Panchayat area set up, establish or use any place for the purpose of a market or a mela **including public market or public mela, as the case maybe.***

*Provided that the state government , may by notification, declare any market or mela to be public market or public mela and the public market or public mela, as the case maybe, so declared shall vest in the Janpad Panchayat **(to be deleted)***

*(2)The state government may make rules to regulate the market or the mela specified in sub-section (1)*

#### ***Insertion to Section 129-C (v) CPRA***

*(v) **To establish, regulate, manage village markets, public markets, public melas and melas (to be deleted)** including cattle fairs, by whatever name called, through the gram Panchayat*

#### ***Section 129-D Functions of Gram Panchayat***

*(ii) **To establish, regulate, manage village markets, public markets, public melas and melas (to be deleted)** including cattle fairs, by whatever name called,*

***(The above formulations are subject to analyzing the Chhattisgarh Krishi Upaj Mandi Adhiniyam, 2005 which has to be sourced)***



## **6.6 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))*

CPRA does not vest the Gram Sabha and the Panchayat at appropriate level with the powers to control money lending in scheduled areas. The CPRA needs to be amended to vest the power relating to money lending to the Gram Sabha as well as to the Panchayat at appropriate level.

The Chhattisgarh Money Lending Act, 1934 has yet to be amended giving the Gram Sabha and the Panchayat at appropriate level, the power to control money lending in scheduled areas.

Preliminary research has revealed that the Revenue Department of the Government of Chhattisgarh has issued a letter (No. F4-52/Revenue/2006) dated 16.10.2008 and accordingly in scheduled areas the registration of money lenders and the registration certificate is to be issued by Commissioner, Land Records who has been empowered. This is prima facie bad in law and against the spirit of PESA and has to be withdrawn.

The Chhattisgarh Money lenders Act, 1934 provides for registration of moneylenders and registration certificate – by registering authority. The act defines the *Registered Authority* in rural area, where the tehsildar is the registering authority.<sup>25</sup> It further requires that every registering authority to maintain a register of moneylenders and where such register is a public document. However it does not refer anything specific to schedule area. Although there is a general attempt to decentralization it is not as per PESA requirements in scheduled areas. Further, it also needs to be ascertained whether there are any operational changes that have been brought out at the executive level to affect the transfer of powers to control money lending in the hands of the Gram Sabha along with the Panchayat at appropriate level.

### ***Insertion to section 11-F (1) Chhattisgarh Money lender’s Act, 1934***

***Provided that the person who holds a valid registration certificate shall not carry on the business of money lending in the area of a gram Panchayat or shall not lend money to a member of a gram Sabha unless a resolution to that effect is duly passed by the gram Sabha of such a gram Panchayat.***

### ***Insertion in section 11-F (2-A)***

***(2-A) whoever contravenes the provisions of sub-section (1) in any scheduled area shall be punishable with imprisonment which may extend to two years or with fine which may extend to ten thousand rupees or with both.***

***Explanation- The word ‘scheduled area’ means the scheduled area, as referred to in clause (1) of Article 244 of the Constitution of India.***

<sup>25</sup> Section 11-A



## **Suggested amendments in CPRA Chhattisgarh money lenders Act, 1934**

### **Insert subsection in section 129-C (vi-f) CPRA**

*129-C (vi-f) The Gram Sabha along with the Panchayat at appropriate level for respective jurisdictions shall exercise control over money lending and money lenders who operate in scheduled areas.*

## **Suggested amendments Chhattisgarh Money Lenders Act, 1934**

### ***Insert Proviso in Section 11-A***

*“Provided that in Scheduled Areas this power shall be exercised by the Gram Sabha along with the Panchayat at appropriate level for respective jurisdictions”*

### ***Insert Proviso in Section 3(1)(c-i)***

*“in Scheduled Areas a copy of every statement of account furnished to a debtor under clause (b) shall be furnished to the concerned gram sabha where the debtor is ordinarily a resident*

### ***Insertion to section 2-A (3)***

*The money lender shall also forward a copy of the voucher delivered to the debtor under section (1) to the sub-divisional officer concerned and in scheduled area to the Gram Sabha within such time as may be prescribed*

### ***Insertion to section 11-B (1) after first proviso***

*Provided that in Scheduled Areas the application for registration shall be to the Gram Sabha along with the Gram Panchayat. The Gram Sabha in its meeting shall enter the name of the applicant money lender along with such particulars as the Gram Sabha may decide, in the register of money lenders and Gram Panchayat shall issue a certificate of registration to him in the prescribed format. A copy of the certificate of registration would be submitted to the sub divisional officer by the gram Panchayat.*

## **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 control over local plans and resources for such plans including tribal sub-plans.*

*There are several related provisions in the CPRA as follows: The words development schemes have also been used instead of local plans and tribal sub plans.*

### **Section 7(1) (j-iv) CPRA Powers and functions and annual meeting of gram Sabha**

*To control local plans, resources and expenditure for such plans*

### **Section 49-A other functions of the gram Panchayat**

*(iv) Implement, execute and supervise development schemes and construction work within the Gram Panchayat*

*(xv) To exercise control over local plans, resources and expenditure for such plans*

### **Section 50 Functions of Janpad Panchayat**

*(1-A) Subject to the provisions of this Act and rules made thereunder and subject to Policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of the Janpad Panchayat to-*

*(i) prepare the annual plan in respect of the schemes of economic development and social justice entrusted to it by the Act and those assigned to it by the State Government or the Zila Panchayat and submission thereof to Zila Panchayat within the prescribed time for integration with the district Panchayat plan;*

*(ii) consider and consolidate the annual plan in respect of the scheme of economic development and social justice of all Gram Panchayat and the Janpad Panchayat and submission of the consolidated plan to Zila Panchayat;*

*(iii) prepare plan of works and development schemes to be undertaken from Janpad Panchayat Fund;*

*(iv) undertake regional planning and infrastructural development within the Janpad Panchayat;*

*(v) sanction, supervise, monitor and manage the works of development schemes from Janpad Panchayat funds and for this purpose incur expenditure there from;*

### **Section 52- Functions of Zila Panchayat**

*(1) Subject to the provisions of this Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time, it shall be the duty of Zila Panchayat*

*(iii) Co-ordinate, evaluate, and monitor activities and guide the Janpad Panchayat and Gram Panchayat;*

*(iv) ensure overall supervision, co-ordination and consolidation of the plans prepared by the Janpad Panchayat:*

*(v) ensure the execution of schemes, works, projects entrusted to it by any law and those assigned to it by the Central or State Government;*

*(vi) ensure the execution of transferred or delegated functions, works, schemes and projects of the Central or State government*



***Section 129-C Powers and functions of gram Sabha in scheduled area***

*(vi) To control local plans, resources and expenditure for such plans including tribal sub-plans and*

***Section 129-D functions of Gram Panchayat***

*(vii) To exercise control local plans, resources and expenditure for such plans including tribal sub-plans and*

***Section 129-F Powers of Janpad and Zila Panchayat***

*(iii) To exercise control local plans, resources and expenditure for such plans including tribal sub-plans and*

Apart from the above detailed provisions add a generic provision as follows:

***In Scheduled areas the Gram Sabha along with the Panchayat at appropriate level within which such local plans including tribal sub plans are implemented shall have control<sup>26</sup> over such plans and their resources.***

***Provided further that the state agencies shall facilitate implementation of all such plans and their budgets with the approval of the Gram Sabha and the Panchayat at appropriate level within which such local plans including tribal sub plans are implemented.***

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<sup>26</sup> Control has to be detailed