

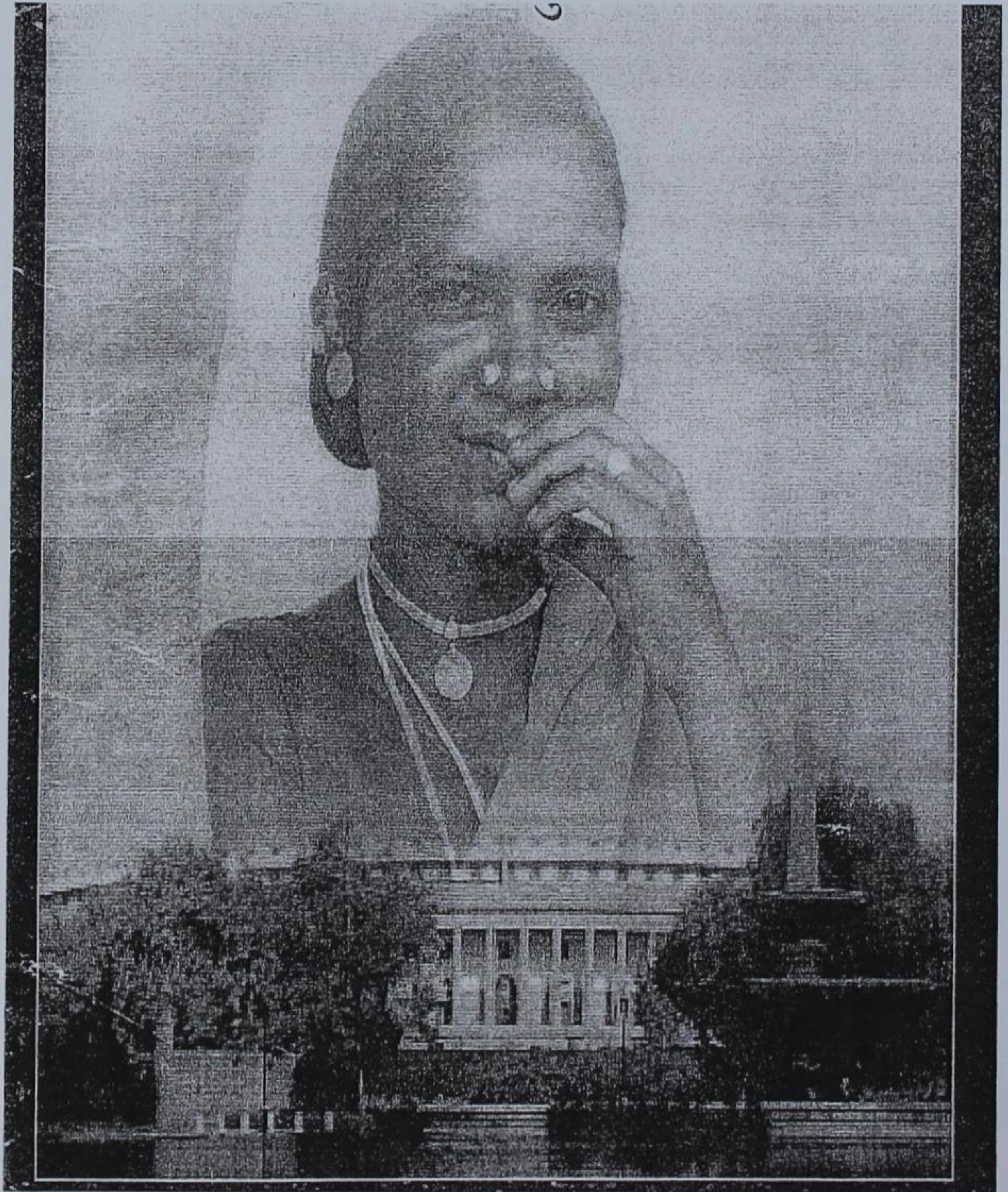
A study of contribution of
Tribal Parliamentarians in strengthening Panchayats
(Extension to the Scheduled Areas) Act (PESA)



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SUVARNA DAMLE

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Suvarna Damle

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CHAPTER ONE

INTRODUCTION

The unique feature of Indian Parliament lies in representation of its citizens. This distinctive feature is also visible at the grassroots-level of the democratic structure like Panchayati Raj Institutions (PRIs). As a result, we have tribal elected representatives from the lower tier to the uppermost tier of democratic institutions in India. The Parliamentarians representing tribal areas have a special responsibility of protecting the rights and culture of their community.

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA) came into existence in 1996 and was enacted primarily to protect the rights of the tribal population living in Fifth Scheduled areas as mentioned in the Indian Constitution. The PESA ensures elected leadership for tribals through the provision of reservation. Therefore, in the Fifth Scheduled areas, the leadership in Panchayati Raj Institutions is entrusted to the tribals. Against this backdrop, it is important to track the effectiveness of tribal leadership from the lowermost tier to uppermost tier of our democratic structure *i.e.* from Gram Sabha to Lok Sabha and Rajya Sabha.

The PESA legally recognizes the capacities of tribal communities to strengthen their own system of self-governance or create new legal spaces and institutions that can not only reverse the cultural and political onslaught on them but also create opportunities to chart and control their own destinies. There is a close link between the tribal leadership in the PESA and Parliamentary representation of tribal MPs who have Fifth Scheduled areas in their constituency.

The present study attempts to find out the status of the PESA at the ground level. Though it has been 16 years since the PESA was enacted, but in reality, much still remains to be done to make effective use of the provisions of the PESA.

This is primarily for two reasons. Firstly, the tribal population living in Fifth Scheduled areas is ignorant about their rights and about their power vested with them through the PESA. Secondly, delay on part of the State on implementation of the PESA. Hence, the role of elected representatives in the highest tier of democracy *i.e.* the Parliament, is very crucial. If the elected Member of Parliament is a tribal, it is expected from her/him to see that the tribal community practise "self-governance".

It is also important to mention a key "observation" here; most of the tribal Parliamentarians started their political career from Gram Panchayats, where the PESA is applicable. Thus, they have experience of implementation of the PESA.

This study elaborates the work done by tribal Parliamentarians for the development of their constituency. The study also mentions the suggestions of such Parliamentarians with respect to the PESA. This study attempts to highlight the following aspects:

- Role of elected representative from lowest to highest tier of democracy.
- Problems of tribal population living in Fifth Scheduled areas.
- Development and progress of Fifth Scheduled areas by the Parliamentarians.

1.1 THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT (PESA), 1996

The bulk of tribal population lives in Fifth and Sixth Scheduled areas. These are described in the Constitution as Scheduled areas and tribal areas, respectively. Article 243M(4)(b) in Part IX of the Constitution provides that Parliament may by law extend the provisions of Part IX to these areas subject to such exceptions and modifications as may be specified by the law.

In response to long standing demands for extending the provisions of Part IX to the Scheduled areas so as to enable self-governance for tribal people consonant with their customary law, social and religious practices, and traditional management practices of community resources, the Government appointed Bhuria Committee in 1994. Based on the report of this committee, the PESA was passed in 1996 and came into effect on December 24, 1996 with respect to the Fifth Scheduled areas.

The Act defines a village as consisting 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. It stipulates that every village will have a Gram Sabha, which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution.

With respect to the manner of reservation of seats at each Panchayat level, the Act stipulates that reservation for the Scheduled Tribes shall not be less than half of the total seats and that all seats of Chairperson of Panchayats at all levels be reserved for the Scheduled Tribes. It has also provided that State Government would nominate persons belonging to Scheduled Tribe with no representation in the Panchayat at the intermediate level not exceeding one tenth of the total members to be elected in that Panchayat.

Broadly, the functions, powers and responsibilities of the Gram Sabha and Panchayats are as follows:

- **Mandatory executive functions and responsibilities:** The Gram Sabha will approve plans, programmes and projects. Before they are taken up for implementation by the Panchayats at the village level, it would identify beneficiaries of poverty alleviation and other programmes and issue certificates of utilization of funds by the Panchayat at village level for the above programmes. Planning and management of minor water bodies will be done by the Panchayats.
- **Mandatory consultation:** Gram Sabha or Panchayat at the appropriate level shall be consulted before acquiring land in Fifth Scheduled areas for development projects before settling rehabilitated persons affected by these projects.
- **Mandatory recommendations:** The adherence to the recommendations of the Gram Sabha or the Panchayat at the appropriate level is mandatory prior to the grant of prospecting license or mining lease for the exploitation of minor minerals by auction.
- A duty has been cast upon the State Legislature to ensure that the Gram Sabha and Panchayats at the appropriate level are endowed specifically with such powers and authority as to enable them to function as institutions of self-government. These are: **power to enforce prohibition, ownership of minor forest produce, power to prevent alienation of land, power to manage village markets, power to**

exercise control over money lending, power to exercise control over institutions and functionaries in all social sectors and power to control local plans and resources for such plans including tribal sub-plans.

- The Act prohibits Panchayats at the higher level to assume power and authority of any Panchayat at the lower level.
- The Act provides that any provision of any law which is inconsistent with its provisions shall cease to be in force after the expiry of one year from the date on which the Act receives the assent of the President.

1.2 PESA AND CENTRAL GOVERNMENT

While Article 243L extends the provisions of Part IX to the Union Territories, under certain terms and conditions, Article 243M gives Parliament the power to extend the provisions of Part IX to tribal areas as listed in the Fifth Schedule. It is in exercise of these powers that the Parliament passed the Provisions of the Panchayats (Extension to the Scheduled Areas) Act 1996, better known by its abbreviation, as PESA.

Article 243M also exempts certain States and certain areas covered by the Sixth Schedule, as also certain other States and regions covered by separate special arrangements, from the purview of Part IX. Moreover, the Article exempts Arunachal Pradesh from necessarily making reservations for the Scheduled Castes.

The PESA Act, 1996 extends Part IX of the Constitution to Fifth Scheduled areas subject to certain exceptions and modifications.

The following nine States have Fifth Scheduled areas: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.

The PESA enjoins upon the State the obligation to consult tribal communities and their elected representatives in evolving criteria for the constitution of village Panchayats and Gram Sabhas in Fifth Scheduled areas and to ensure that tribal communities, on the basis of ethnic identities, are constituted into different Gram Sabha even within a Panchayat area. It also provides that any provision of any law, which is inconsistent with its provisions, shall cease to be in force at the expiry of one year from the date on which the Act receives the assent of the President (24.12.1996)

While all States concerned have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts, certain gaps remain such as:

- Continuance of existing laws relating to money lending, forest, excise etc. which are not in consonance with the letter and spirit of the PESA.
- Incomplete transfer of ownership of minor forest produce, planning and management of minor water bodies to Gram Panchayats and Gram Sabhas.
- Inadequate action on preventing alienation of tribal lands recognized in the PESA to be the traditional rights of the tribals living in the Fifth Scheduled areas.
- As in case with Panchayati Raj in general, powers statutorily devolved upon the Gram Sabha and the Panchayats not being matched by concomitant transfer of funds and functionaries, resulting in the non-exercise of such powers.

Consequently, in practice, compliance with the PESA remains incomplete and perfunctory. Over the years, States have been urged to expedite compliance with the PESA but to little avail, as revealed by several evaluations commissioned before 2004

by the Ministry of Rural Development. The Third Round Table of Panchayati Raj Ministers held at Raipur agreed to enforce the PESA provisions and undertake a wider consultation with other Government Departments so as to harmonize the provisions of other laws concerned with the aims and objectives of the PESA. In order to assist States in expediting compliance, the Ministry of Panchayati Raj entrusted the Indian Law Institute with the task of formulating appropriate amendments in State laws concerned. The report of the Indian Law Institute has been forwarded to the concerned States in May 2006 for further action at their level.

To maintain the impetus on the PESA implementation, the Ministry convened a meeting of State Secretaries of Departments of Panchayati Raj, Tribal Development, Commissioners of Tribal Area Development, Heads of Tribal Research Institutes, Tribal Development Corporations and representatives of Central Ministries on July 14, 2006. Two sub-groups were formed to undertake the following issues:

- a) To study issues relating to minor forest produce in the PESA States
- b) To suggest remedial action, wherever required, with respect to land alienation, displacement and rehabilitation in the PESA States.

CHAPTER TWO

PESA IN STATES

Nine States — **Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan** — have Fifth Scheduled areas. Many States have not amended laws and rules relating to mining, forest, money lending and excise. Vital issues such as ownership of forest produce, planning and management of minor water bodies and prevention of alienation of tribal lands are duly recognized in the PESA as traditional rights of the tribal population in Scheduled areas. These issues, however, have not received the required attention and the necessary corrections have not been done.

In some States, provisions have been made for representation of MPs and MLAs in elected Panchayats. In addition, they also provide for MPs and MLAs to nominate their representative to Panchayats. Apart from such practices being undemocratic, several such nominees are non-tribal which is unconscionable.

2.1 PESA in Madhya Pradesh

In Madhya Pradesh, the implementation of the PESA started with amendments in the provisions in five important Acts to bring them in congruence with the PESA provisions. **These Acts are: Panchayati Raj Act, Aabkari (excise tax) Act, Land Revenue Act, Mining and Extraction Act and Gram Nyayalaya Act.**

The discussion to amend more Acts including **Sahukari Act, Land Acquisition Act, Indian Penal Code, Forest Act**, etc. is still on to make the PESA effective.

Amendments made in the Panchayati Raj Act

- Under Section 129(3), the management of the natural resources in Fifth Scheduled areas was given to Gram Sabhas and therefore the State has no role in decision making with regard to the natural resources under the Fifth Scheduled Area.
- The ownership, management and use of small water bodies, was given to the Panchayati Raj Institutions. Now the PRIs are able to give these small water bodies on lease for fishing or allow the use of water for irrigation purposes.
- The Chairperson of the Gram Sabha would be a tribal voter from the Scheduled Area. Earlier, the provision allowed the Gram Sabha to nominate any member of the village as Chairman of the Gram Sabha.

Amendments made in the Aabakari (Excise Tax) Act

- Section 16(D) of the Madhya Pradesh Abkari Act empowers Gram Sabhas to prohibit manufacture, storage, transport, sale and use of any abusive substances. Liquor manufacturing units which already existed before this act were exempted from this provision.
- The Gram Panchayats are supposed to implement the decision taken in Gram Sabhas.

Amendments made in the Land Revenue Act

- This act empowers the Gram Sabha to take action in cases where the land belonging to a tribal is transferred, purchased or taken away by a non-tribal.
- The **Gram Nyayalaya** has given **Gram Sabhas** the status of **Tehsildar** and thus all powers and authorities of **Tehsildars** are now transferred to Gram Sabhas in the Fifth Scheduled areas.

Amendments in the Mining Act

The provisions of the Mining Act are not only limited to the Scheduled areas but to other areas of the State as well. In case of extraction of minor minerals, the official has to seek permission from the Gram Panchayat. The minor minerals are divided in two categories:

- Minerals fetching annual royalty up to Rs 10 lakh are transferred to three tiers of PRIs
- All minor minerals which are used/consumed by the local tribal community. These provisions have removed the State's stake from collecting royalty & use its authority.

Provisions of Gram Nyayalaya Act

- Gram Sabhas are empowered to give justice in cases of theft, attacks, alcohol abuse, violence against women, bonded labour etc.
- In case of illegal ownership of land or encroached land, the Gram Sabha will have the power of a tehsildar.
- Intervening and justice in civil cases of certain jurisdiction
- Right related to excise, betting etc.

2.2 The PESA in Maharashtra

Under the Mumbai Gram Panchayat Adhiniyam, the following provisions and amendments were made in the years 1997 and 2003 with regard to the PESA.

The Gram Sabha of Fifth Scheduled Area in Maharashtra will have the following rights and authority:

- The Gram Sabha will ensure to protect the tradition, culture, collective resources of the residing tribal population.
- The Gram Sabha will also settle conflicts.
- The Gram Sabha will act as a consultative body and will take decision as regards the implementation of programmes for social and economic development being implemented by the Gram Panchayats.
- The Gram Sabha will also have the right to provide a certificate to the Gram Panchayats which will mention the expenditure incurred by the Gram Panchayats.
- To identify and ascertain the beneficiary of Government-sponsored Schemes for poverty eradication and other similar Schemes.
- To impose ban on sale and consumption of liquor through Gram Panchayats

- Based on Maharashtra Scheduled areas Minor Forest Produce Rights Act, giving legitimate powers to Gram Panchayats to take decisions in this context
- To bring illegal acquisition of tribal land to the notice of the District Collector.
- The Panchayat and Gram Sabha in the Scheduled areas will have the final say to prohibit money lending by private moneylenders. They will also have the right to review the annual business of private moneylenders in the Scheduled areas.
- To guide and direct the Panchayats to monitor the resources allocated through tribal sub-plans and other such Schemes
- To prepare and plan Schemes of minor irrigation and to approve such Schemes prepared by the Gram Panchayats.
- To approve proposal for establishing market under its jurisdiction. The decision for the management of such markets taken by the Gram Sabha will be final and binding on the Gram Panchayats.
- The Gram Sabha will be the consultative body for acquiring land for the purpose of any development related project in the Scheduled areas. Similarly, for the rehabilitation of people affected by land acquisition, the Gram Sabha will be the consultative body.
- The Gram Sabha will be the consultative body for issuing license for extraction of minor minerals in its jurisdiction. The Gram Sabha's decision will be final and binding on the Gram Panchayat or any authority.
- The Gram Sabha will monitor implementation of social development programmes and make necessary suggestions to the Zila Parishad and Panchayats amiti.
- The Gram Sabha's decision will prevail in case of tree felling. The Gram Sabha's suggestions will be binding on the Panchayats or any authority.
- The Gram Sabha will pass the budget prepared by the Gram Panchayat and their decision will be final and binding on the Panchayat.
- In case of using any natural resources like water, land, forest etc., the related authority will consult the Gram Sabha through the Panchayat before implementation.

In Maharashtra, a Panchayat will have the following authority and responsibilities:

- The Gram Panchayat in Scheduled areas will obtain certificate from the Gram Sabha for utilization of funds allocated under various Schemes.
- The Gram Panchayat will consult the Gram Sabha regarding land acquisition for any development purpose and then discuss the matter with land acquisition authority.
- The Gram Panchayat will respect the decision taken by majority in Gram Sabha about issuing license for extracting minor minerals.
- The Gram Panchayat may give suggestions to Panchayats amitis or Zila Parishad for the implementation of programmes of social development.

- The Gram Panchayat will consult the Gram Sabha before making recommendations to the District Collector with respect to illegal land acquisition of tribal land.
- The executive management of private moneylending will be under the Gram Panchayat purview. However, it will consult the Gram Sabha before taking any decision with respect to moneylending.
- Minor irrigation projects having capacity of irrigating 100 hectares will be decided by the Gram Panchayat.

2.3 PESA in Chhattisgarh

After its formation in the year 2000, **Chhattisgarh** has made following provisions with reference to the PESA implementation in the State:

- **Village and Gram Sabha:** Gram Sabha will be constituted by persons whose names are included in the Panchayat's voters' list. The term village refers to a hamlet or cluster of hamlets where the community resides.
- **Constitution of Gram and Gram Sabha (Village and Village Council):** The State Governor has the power to authorize a village by issuing a public notice. There will be one Gram Sabha for one village. If the villagers or members of Gram Sabha resolve to have more than one Gram Sabhas, they may do so.
- No less than 1/3rd of total number of Gram Sabha members shall form the quorum for Gram Sabha meeting of which not less than 1/3rd shall be women members.
- The Gram Sabha Chairperson will belong to a Scheduled Tribe, and that he/she should not be a member of Gram Panchayat and that he/she is nominated by the members of the Gram Sabha for the post of Chairperson of the Gram Sabha.

The role and powers of Gram Sabha

- To maintain, and protect the traditional and cultural values and means of the tribes
- To conserve natural resources like land, water, forest as per the constitutional provisions
- To manage the village markets including livestock market.
- To monitor and control resource allocation and expenditure on locally implemented schemes including tribal sub-plans.
- To use such power as entrusted by the State Government or the legally sanctioned authority.

Responsibilities of the Gram Panchayat

The Gram Panchayat will act and perform its duties by abiding the provisions of the PESA. The Gram Panchayat is entrusted with the following functions:

1. To manage the village market including livestock market.
2. To monitor and control resource allocation and expenditure on locally implemented Schemes including tribal sub-plans.
3. To use powers as entrusted by the State Government or legally sanctioned authority.

Reservation of Seats: The reservation of seats for Scheduled Tribes and Scheduled Castes will be in proportion to their numbers. However, the reservation for Scheduled Tribes should not be less than half of the total seats. The posts of Sarpanch and Chairpersons of other tiers of Panchayati Raj Institutions will be reserved for the Scheduled Tribes.

- The State Government can nominate persons from Scheduled Tribes in middle and district-level tier of Panchayat who are not represented at these levels. However, the nomination will not exceed more than one-third of the total seats.
- In the Scheduled areas, the reservation for the OBC will be not more than three fourth of the total seats reserved for Scheduled Castes and Scheduled Tribes.

Powers of Janpad (block) and Zila (district) Panchayat: In the Scheduled area the District and Block Panchayats will have following powers:

- To plan, monitor, own and manage small water bodies and irrigation schemes
- To monitor agencies of social sector
- To monitor and control local schemes including tribal welfare schemes.
- To use such power and do such things as are entrusted by the State Government or legally sanctioned authority.

CHAPTER THREE

DISCUSSIONS IN RAJYA SABHA ON PESA

The Provisions of the Panchayats (Extension to the Scheduled Areas) Bill, 1996 was introduced in the Rajya Sabha on December 12, 1996 by the then Minister of Rural Areas and Employment, **Shri Yerran Naidu**. **Shri Ajit P. K. Jogi**, Vice-Chairman was presiding over the sitting of the House. While introducing the Bill, **Shri Naidu** mentioned the following highlights of the Bill:

1. The PRIs were set up in the wake of 73rd Constitutional Amendment Act, 1992 which came into force in April, 1993 and inserted Part IX of the Constitution which provides an ideal institutional framework for democratic decentralization. Scheduled Areas referred to in Clause (1) and tribal areas referred to in Clause (2) of Article 244 were excluded from the operation of Part IX of the Constitution. The States which have Scheduled areas are **Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa (now Odisha) and Rajasthan**.
2. After the enactment of the 73rd Constitutional Amendment Act, these State Governments having Scheduled areas, enacted the State Panchayat laws which did not exclude the Scheduled areas. This action on their part tantamount to extension of legislation on Panchayati Raj to Scheduled areas. The extension of Part IX of the Constitution by the States of Andhra Pradesh and Bihar to Scheduled areas was challenged in their respective High Courts. The Courts have held the extension of State Panchayat Acts to the Scheduled areas as *ultra vires* of the Constitution and viewed that Part IX can be extended to the Scheduled Areas only through an Act of Parliament as provided in Article 243M(4)(b) of the Constitution. This is the reason for introducing the present Amendment which would apply to the Scheduled Areas in eight States.
3. There have been persistent demands from the prominent leaders of the Scheduled areas and Members of Parliament as also from the State governments for extending the provisions of Panchayati Raj to Scheduled areas. In this background, a Committee of Members of Parliament and experts was constituted with the approval of the Prime Minister to make recommendations on the law concerning such extension to the Scheduled areas. The Committee under the **Chairmanship of Shri Dilip Singh Bhuria**, a Member of Parliament belonging to Scheduled Tribe and seven other expert members including representatives of concerned Ministries and Departments submitted its report.
4. The Committee held extensive consultations with the concerned Ministries of the Government of India and the State Governments. The PESA Bill seeks to extend the Panchayat Raj to the Scheduled areas with certain exceptions and modifications which aim at ensuring that the essential features of the tribal society remain intact. The Bill provides that the State legislation, which would follow, should be in consonance with the customary laws, social and religious practices, customs and traditions of the tribal people.
5. Every village shall have a Gram Sabha consisting of all persons who live in a village and whose names are included in the electoral rolls. Keeping in view the demographic layout in tribal areas, the village could be a hamlet consisting of 5 to

- 30 families or a cluster of hamlets, a habitation or group of habitations. The empowerment of the Gram Sabhas is at the core of this Bill. The Gram Sabhas shall be competent to safeguard and preserve the traditions and customs of the people. It is proposed to be vested with powers to approve the programmes and projects for social and economic development, to identify the beneficiaries of poverty alleviation programmes and to certify the utilization of funds.
6. Tribal communities have been deprived over the years of their rightful control over their natural and economic resources such as land, water, minor forest produce, minor minerals, etc. as a result of the action of private parties and also as a result of certain developmental projects. The Bill proposes to remedy this by providing that the Gram Sabhas and Panchayats at the appropriate level shall be endowed specifically with the powers to prevent alienation of land in the Scheduled areas and to restore and unlawfully alienated land of a Scheduled Tribe. Prior recommendation of the Gram Sabha and the Panchayats shall be mandatory for acquisition of land for any developmental projects and for any resettlement of project affected persons and for exploitation of minor minerals. The ownership of minor forest produce is to be vested in the Panchayats. The Bill also addresses the problem of tribal indebtedness and empowers Panchayats to exercise control over moneylending in the Scheduled areas. The Bill also seeks to vest Panchayats in the Scheduled areas with powers to manage local markets and to control and restrict sale and consumption any intoxicant so as to prevent unscrupulous elements from operating in these areas.
 7. In order to make decentralization meaningful, the Panchayats and the Gram Sabhas have been empowered to exercise control over the local plan resources including Tribal Sub-Plans and also to exercise control over institutions and functionaries in all social sectors.
 8. To make self-governance a reality, it is proposed that State legislations should vest Panchayats at each level with specific powers and authority and provide safeguards to prevent Panchayats at the higher level from assuming powers of Panchayats at the lower level or of the Gram Sabhas. The Bill also provides that the offices of the Chairpersons at all levels in the Panchayats shall be reserved for the Scheduled Tribes and the reservation of seats at every Panchayat shall not be less than fifty per cent of the total number of seats. The Bill further makes a provision to enable State Governments to nominate to Panchayats at intermediate and district levels such tribes as have not succeeded in getting elected. Such nominations shall not, however, exceed ten per cent of the total number of elected representatives.
 9. The Bill while seeking to extend Panchayati Raj to Scheduled areas, aims at strengthening grassroots institutions and safeguarding the fabric of tribal society. In States like Maharashtra, Andhra Pradesh, Bihar, Gujarat, etc., there are no local self governments in the Scheduled areas, while in other areas, there are local self-governments and Panchayati Raj System is working peacefully. So on the basis of the Court verdict, it is required to amend the law. Thus, this Bill is introduced.

After introduction of the PESA Bill, the following Members took part in the discussion on the Bill:

Prof. Ram Kapse (Maharashtra): The elections of Panchayat bodies are due in Maharashtra in February 1997 and thus, if this Bill is not passed, the State will face a

lot of problems, Prof Kapse said. If this Bill is not passed, the Scheduled areas will not have elections. In Thane district of Maharashtra, **Dahanu and Jawhar** are the two blocks under the Scheduled Areas, and since the Bill was not passed there were no elections even in the municipalities for many years. The same applies to the urban areas in **Nashik and Dhule** districts. Though the area is urban and Department is different but the Government is the same. The same case applies to the State of Gujarat. However, in States of Bihar and Andhra Pradesh, people went to the Court and then the State High Court gave its judgment and thus this Bill is introduced.

Prof. Kapse congratulated the Minister for bringing the Bill before Parliament and supported the view that Gram Sabhas be entrusted to plan social and economic development of the village. He supported the clause pertaining to ownership of tribals over minor forest produce, minor mining, and stopping of individual lending.

Shri Maurice Kujur (Odisha): Supporting the Bill, Shri Kujur said that the Bill will help alleviate the tribals' plight. He said that all the States, the laws have been passed prohibiting the alienation of tribal land to non-tribals. He mentioned that about two lakh tribal families in 5,000 forest villages in the country do not possess the ownership right on the land that they have been cultivating for many years. Low literacy rate among the tribals is also one of the reasons for them to lag behind in the process of development. He expressed the hope that the proposed Bill may take care of these concerns.

Shri Sanatan Bisi (Odisha): Shri Bisi pointed out that in some States, the funds allocated for the Tribal Sub-Plan are being siphoned off and are not being spent properly. Shri Bisi also requested the Minister to ensure equal representation of tribals in the electoral constituencies as guaranteed by the Constitution.

Shri Jagannath Mishra (Bihar): While passing the 73rd Constitutional Amendment Act, it was provided that for the States of North-East and for the Scheduled Areas, there will be a different law and thus the PESA Bill has been introduced for the Scheduled areas. The Fifth and Sixth Schedules of the Constitution have special provisions for the Scheduled Areas and Scheduled Tribes. These also empower the Central Government to frame welfare schemes for tribals in different States. Thus, it is evidently clear from various provisions of the Constitution that our Constitution framers have given special importance to protect the interests and promote the welfare of the tribals. The Bhuria Committee has proposed a special law for the Scheduled Areas taking into consideration the lifestyle, culture and traditions of the tribal population, which is absolutely justified, Mr Mishra said.

In tribal areas, the most important problem is that of land acquisition. When the land is acquired for public work, tribals are alienated. Thus, while acquiring such land, the Gram Sabha should be empowered to decide about land acquisition. For example, in Bihar, land is acquired on large-scale from the tribals and now in spite of the State efforts to return the land to the tribals, a lot of land is still acquired by non-tribals. Therefore, the local Gram Sabha or Panchayat should be made equally responsible in case of decision making related to land acquisition.

Consumption of liquor is another big social problem among the tribals, he said. Thus, the Gram Sabhas should be empowered to exercise ban, control manufacture, sale and consumption of liquor. The the PESA will look into all these matters. However, there is a big concern that PRIs too have been given some powers and 29 subjects were transferred to the Panchayati Raj Institutions. However, the PRIs

are still not able to use their powers despite State directions. In Tamil Nadu, Odisha, and Bihar, the Panchayat elections are not conducted despite the Central Government's directives. In Rajasthan, the PRI elections have been held but the powers have not been transferred. The decisions taken in the Conference of Panchayat Ministers on January 9, 1996, should be followed to strengthen the Panchayati Raj System in the country.

Shri Nilotpal Basu (West Bengal): Extending his support to the Bill, Shri Basu said that the Bill has a lot of significance to integrate people at the grassroots and mobilize them for development. It is also important to bring the Scheduled areas within the ambit of Panchayati Raj administration.

Shri Ramachandra Reddy (Andhra Pradesh): Supporting the Bill, Shri Reddy said since the provisions in Part IX of the Constitution did not include Scheduled Areas, elections could not be held in the Scheduled areas of Khammam and Visakhapatnam districts. Shri Reddy congratulated the Minister for bringing the Bill before Parliament.

Shri Nagendra Nath Ojha (Bihar): He made the following suggestions while supporting the Bill:

- The rights for afforestation should be given to Panchayats of Scheduled areas on the degraded forest land.
- Many tribals have settled on degraded forest land for more than 20 years. In such places, ownership over the settlement should be given to tribals staying there.
- The banks/branches of banks operating in the Scheduled areas should provide credit to tribal instead of big business houses.
- With regard to "eviction" cases, many tribals are behind bars and facing criminal charges framed by the Forest Department. So under the PESA, the right to stop "eviction orders" should be given to the Panchayats.
- The NGOs which work in Scheduled Areas should draw at least 75% of their workforce from the tribal area.

Shri Ish Dutt Yadav (Uttar Pradesh): He supported the PESA bill, as he saw some positive inbuilt provisions which will enable the Panchayats to use its power. He cited the cases in Uttar Pradesh where law does not permit buying tribal land without the permission of the District Collector. While passing the 73rd Constitutional Amendment Act, the Parliamentarians wanted the "power" to rest with the people. However, in PRI system the administrative machinery like SDM, Collector and Commissioner are above the elected candidates. Thus while passing the PESA, it should be kept in mind that the power of "decision making", the power of finance, and the power of administration should rest with Panchayats.

Shri V. P. Duraisamy (Tamil Nadu): By introducing the Bill, the Government wants to safeguard the rights of the Scheduled Caste and Scheduled Tribe people and they will get an opportunity to contest in Panchayat elections. The 73rd and 74th Constitutional Amendment Acts provided reservation for SC and ST people, but other people were opposing the reservation. In many States, Panchayat elections were not held, and the names of such States, not favoring Panchayat and Nagarpalika elections, should be brought to the notice of the Parliament. Such States should face disciplinary action by the Central Government, he said. In Tamil Nadu, a woman belonging to

Scheduled Caste became the Chairperson of the municipal body while another tribal woman become the President of a Panchayat .

Shri S. Peter Alphonse (Tamil Nadu): While Shri Alphonse congratulated the Government for introducing PESA, he also cautioned the Government that as the PESA provisions will be implemented for the first time in Scheduled areas where no provisions existed till now, utmost care should be taken to see that the Bill is comprehensive, proper and final. It should also be seen that there are qualified candidates available in the Scheduled areas to occupy the Panchayat post. Like the case of reservation for women, it is difficult to find women in public life. Thus, before making any such provision, it is the duty of the Government to train candidates who can occupy the seats later, he said.

Shri R. Margabandu (Tamil Nadu): He referred to Clause 4(m)(iii) of the the PESA Bill which reads: "The power to prevent alienation of land in Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe". He said that, if the property is sold, it is automatically registered and then there is fear of alienation. He suggested that if a property of alienable character were to be transferred by registration; such registration should be refused as it would avoid most of the litigations. Referring to ownership of minor forest produce, in Janvathi Hills of North Arcot District of Tamil Nadu where minor forest produce is openly auctioned, he said that the tribal people are not able to compete with the market. The PESA will put a check on such auction. Shri Margabandu pointed out another grey area where the Police book the tribal people under false offence and seek money from them. If they pay money, the case is withdrawn otherwise the tribals are trapped. In cases where the land is being cultivated by the tribals for centuries, no transfer or assignment of the land is done and the Forest Department authorities book the innocent tribals under criminal cases.

Shri Gopalsinh G. Solanki (Gujarat): The proposed PESA Bill is an extension of the provisions relating to the existing PRI system. However, the Bill did not contain the provision of any income of the Panchayats. The Bill should have made some provisions so that the Panchayats in the Scheduled Areas could raise some income. In Gujarat, before the PRI provisions came into existence in 1993, the sitting Members of Parliament were *ex officio* members of district Panchayats.

Shri S. S. Surjewala (Haryana): He pointed out that the discussion on the PESA Bill is being presided over by one of the tallest leaders of the Scheduled Tribes which is a very befitting tribute. The PESA Bill has been brought forth very belatedly, after almost 50 years of independence. After the 73rd Constitution Amendment Act, the bureaucracy, the Deputy Commissioner, SDM, BDO, etc. uses the elected people as their tools. Giving the example of his State, Haryana, he said that, the Deputy Commissioner is bent upon suspending or removing all the women and SC, OBC Sarpanchs for various reasons. This state of affairs should be noted while passing the PESA. He, however, expressed happiness that the elected representatives would be allowed to manage matters relating to forest areas, mine and minerals. The Bill also provides that all these powers are to be vested in them only when the State Government makes the necessary laws and rules. The prevalent prejudices of officers are anti-poor, anti-tribal and anti-women.

Shri Maheshwar Singh (Himachal Pradesh): He pointed out that the Bill is anti-liquor, but in **Kinnaur, Lahaul-Spiti and Pangi-Bharmour** blocks of Himachal Pradesh, the consumption of liquor is no fashion or addiction but a necessity, as these

areas remain snow covered for about six months a year and these areas are very close to the China border. The tribals in this area are the soldiers and save the country's borders. Thus, if consumption of liquor is banned here, then the local people may die. Another problem area here is with the selling of hops flowers. Till GATT Treaty, the local farmers could sell their flower crop to international market. But with GATT, they are not able to compete with international market.

He also raised the issue of delimitation. If the Government is planning to bring a Bill on delimitation then what will happen to these three blocks of Himachal Pradesh which are tribal dominated and have a population of about 1.5 lakh. Still they are covered under Mandi Parliamentary Constituency, and thus their Parliamentary representative will not be able to reach out to the tribal population. Thus, a separate Parliamentary Constituency should be created to represent tribal population of this area.

Shri Abdul Gaiyur Qureshi (Madhya Pradesh): In Jhabua district of Madhya Pradesh, there is a practice of Bhagoriya, where the boy and girl run away from family before marriage and later they decide whether they want to marry or not. If they want to marry, then the bride's father demands some money from the groom. If the groom is ready to pay the money, then the marriage is solemnized. If not, then the matter goes to the Panchayat for resolving the issue. In some cases, the matter is not resolved even by the Panchayats, then such matter becomes a case of abduction. Therefore, it is important to see that the tradition of the tribal community does not become a criminal offence.

He also shared his experience of tribal culture, where he noticed that the tribals do not consume cow milk, as they consider that the God has created it for the calf and not for humans. Thus, he requested that a cell be constituted at the national level, which will identify such traditional beliefs and practices of the tribal population and will help to protect them legally. Such step was taken in Madhya Pradesh, where a Committee was constituted under the Chairmanship of a High Court Judge. He also praised the clause where any law is applicable to the Scheduled areas only if it follows the guiding principles laid under the PESA, otherwise such law will be treated as *ultra vires*. Shri Qureshi also stressed the need for training the tribal people about local self-government. The National Institute for Rural Development should be given the responsibility of conducting training for the tribal people.

Smt. Kamla Sinha (Bihar): Smt. Sinha said that this Bill should have been passed along with the PRI Act. However, she said it was good that the Government has brought forward the Bill. She informed the House that in Bihar, the Chhota Nagpur Land Tenancy Act prohibits the sale and purchase of land belonging to tribal community. However, there are aberrations. But, by and large, Tenancy Act protects the land rights of the tribal people. Smt. Sinha also quoted an example of Ho and Munda communities of Chaibasa area of Jamshedpur, where the villagers themselves decide the Gram Sabha and they also choose one head of the Gram Sabha who is known as 'Munda' and the other is known as 'Manki'. This Gram Sabha had the right to collect the revenue and give it to the Government. At the same time, the Gram Sabha could hold back a part of the revenue for its own work. Thus, when the PESA is passed, we need to consider the Manki-Munda system in Bihar as the Bill also seeks to protect the land of the tribal people, their culture and their way of living.

Shri Jalaluddin Ansari (Bihar): Shri Ansari welcomed the Bill and expressed his doubt that in some parts of the Scheduled Areas, the tribal people have their own

Panchayats and local governing systems. If the PESA is applied in such areas, it will not be able to protect the local traditions and customs of the tribal community. Therefore, it is important to protect them so that there is no internal resistance before passing the Bill.

Reply of Shri K. Yerran Naidu: Shri Naidu thanked all the members who participated in the discussion and supported the Bill. He mentioned that many Parliamentarians have raised the issue of inadequacy of the provisions of Part IX of the Constitution. He said that the PESA cannot amend this Part of the Constitution. However, the PESA seeks to correct the deficiencies in relation to the Scheduled areas. Through 73rd Constitutional Amendment Act, elaborate powers have been given to the Panchayats, however, these provisions are not applicable to the Scheduled Areas. Some people in some States have approached High Courts and the High Courts have given judgment that as per the provisions of article 243(M), Part IX of the Constitution cannot be made applicable to Scheduled areas without Parliament making a law in this regard.

While replying to Prof. Ram Kapse who raised the issue of prohibition in the Scheduled Areas, Shri Naidu read out the section 4(m)(i) of the Bill which says: "The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant". So the powers are vested in the Gram Panchayat and the Gram sabha. About moneylending, this Bill provides for giving powers to Panchayats to control moneylending. The Panchayats will be the ultimate deciding authority as far as money lending is concerned.

Regarding the issue of financial resources for the Panchayats of Scheduled Areas, the Minister said that the Finance Commissions have submitted reports to the States of Kerala, Madhya Pradesh, Rajasthan, Punjab, Assam, West Bengal and Karnataka and all other States have appointed Finance Commissions. The Finance Commissions have submitted their recommendations to the State Governments on the percentage of money the State should devolve to the Local Self Government. The periodical meetings of all State Panchayati Raj Ministers are convened to deliberate on Part IX of the Constitution. The States are told to implement the recommendations of the Finance Commission. The Bill provides that the Gram Sabhas should identify the beneficiaries of the poverty-alleviation programmes, etc. Regarding the Scheduled Areas, all powers, including the execution of works, identification of beneficiaries, selection, expenditure etc. are exercised by the Gram Panchayats only. After passing the Bill, when it becomes an Act, the State Legislatures will make legislations in accordance with the PESA provisions. In this regard, Clause 4(o) of the Bill has mentioned "The State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at District levels in the Scheduled Areas. The Sixth Schedule deals with Scheduled Tribal areas in Meghalaya, Assam, Manipur, etc. So they will make administrative changes, if any, taking into consideration the Sixth Schedule also. He thanked all political parties for unanimously supporting this long pending Bill.

Prof. Ram Kapse: As far as townships in the rural areas are concerned, the municipal elections cannot be held without passing this Bill. Now, if this Bill is passed, the townships in rural area in Maharashtra, Karnataka and Andhra Pradesh will face problems. If the Urban Development Minister introduces a Bill immediately, elections can be held.

Shri K. Yerran Naidu's reply: The 73rd Constitutional Amendment Act relates to rural areas and the 74th Constitutional Amendment Act relates to urban areas.

The Vice-Chairman (Shri Triloki Nath Chaturvedi). Both are supplementary and complimentary. It is a good suggestion that Prof. Ram Kapse has made. Thereafter, a motion was put by the Vice-Chairman, Shri Triloki Nath Chaturvedi: "The Bill to provide for extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas, be taken into consideration." The motion was adopted.

3.1 PARLIAMENTARY DEBATE AND DISCUSSION ON PESA

Following are the details of the debate and discussion held in the Parliament on PESA:

A question was raised by Shri Babu Hari Chavre in the Winter Session of the Parliament on December 17, 2008, addressed to the Minister of Panchayat i Raj and Minister of Development of North Eastern Region, Shri Mani Shankar Aiyar. The question was:

- a) The States which have and have not implemented the PESA and the action taken by the Government against States which have not implemented the Act.

Shri Mani Shankar Aiyar replied:

- a) The the PESA was enacted on December 24, 1996. Subsequently, 9 States having Fifth Scheduled areas namely – Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan have amended their respective Panchayat i Raj Acts to give effect to the PESA provisions. Thus, all the 9 States concerned have implemented the PESA Act through amendment of Panchayati Raj Acts as well as some of the subject laws of their States.

Based on the replies received from the States a detailed questionnaire on the status of implementation of some of the important provisions of PESA, the following statement has been prepared:

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STATEMENT

1. What is the definition of the natural village in the State in the the PESA blocks?	
Madhya Pradesh	As per the Madhya Pradesh Panchayat i Raj Act, a village means a village in the Scheduled Areas, which shall ordinarily consist of a habitation or a group of habitations or hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs
Chhattisgarh	As per the Chhattisgarh Panchayat i Raj Act, a village means a village in the Scheduled Areas, which shall ordinarily consist of a habitation or a group of habitations or hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs
Odisha	In the Scheduled Areas, a Gram (village) which shall ordinarily consist of a habitation or a group of habitations or hamlet or a group of hamlets thereof comprising a community or communities and managing their affairs in accordance with traditions and customs.

Maharashtra	Village and group of villages means the village or as the case may be, a group of villages, specified in the notification issued under clause (g) of Article 243 of the Constitution of India
2. Who approves plans, programmes and projects for social and economic development before implementation by Panchayat in Scheduled Areas? Is Gram Sabha empowered or some other institution?	
Madhya Pradesh	Gram Sabha
Chhattisgarh	The Gram Sabha approves plans, programmes and projects for social and economic development before implementation by Panchayat in Scheduled Areas
Odisha	Gram Sabha approves plans. Proposal submitted by the Palli Sabha, which is recommended by the Gram Sabhas to Gram Panchayat for execution.
Maharashtra	The plans, programmes and projects for socio-economic development are approved by the Gram Sabha
3. Who is empowered to select the beneficiaries under the poverty alleviation and other programmes?	
Madhya Pradesh	Gram Sabha
Chhattisgarh	Gram Sabha
Odisha	Gram Sabha
Maharashtra	Gram Sabha
4. Does the Gram Sabha issue utilization certificates for expenditure of funds allocated for a Programme? If not, which is the competent authority to issue utilization certificates for village-level works?	
Madhya Pradesh	Yes, utilization certificates are being issued by Gram Panchayat on the basis of a resolution of the Gram Sabha
Chhattisgarh	Yes, utilization certificates are being issued by Gram Panchayat on the basis of a resolution of the Gram Sabha
Odisha	No, the Gram Panchayat issues utilization of funds for village-level work.
Maharashtra	It is obligatory for the village Panchayat to obtain the certification of utilization of funds from the Gram Sabha.
5. What is the legislative provision for reservation of SCs/STs in Scheduled Areas? Is the number of reserved seats decided on the proportion of population?	
Madhya Pradesh	Yes, seats for SCs & STs are reserved in proportion of their population to the total population
Chhattisgarh	A minimum 50% of seats are reserved for STs in Scheduled Areas.
Odisha	In case of seats of members, a minimum of 50% is reserved for STs and balance are reserved for other communities including SCs according to their percentage of population.
Maharashtra	The seats are reserved in proportion to their populations.
6. Are the seats of Chairpersons of Panchayats at all levels reserved for STs?	
Madhya Pradesh	Yes
Chhattisgarh	Yes, the seats of chairpersons in Panchayats at all levels are reserved for STs in the Scheduled Areas of Chhattisgarh

Odisha	Yes
Maharashtra	Wherever the tribal population of Panchayats exceeds 50%, the Chairperson's seat is reserved for ST candidates
7. Are Gram Panchayats consulted prior to acquisition of land in the Scheduled areas for development projects? Which agency has been authorized to coordinate the implementation of such projects?	
Madhya Pradesh	Yes, the Gram Sabha is consulted
Chhattisgarh	The Gram Panchayats are consulted prior to acquisition of land in the Scheduled Areas for development projects
Odisha	No acquisition of land shall be made without consultation with the Zila Parishad
Maharashtra	The Gram Panchayats need to be necessarily consulted prior to acquisition of land in the Scheduled Areas for any development projects. However, no village Panchayat shall convey its views to the land acquisition authority without Gram Sabha's approval. Various departments which are entrusted with the works/project are supposed to coordinate the development works.
8. Who has been entrusted with planning & management of minor water bodies in Scheduled Areas? In PRIs, has there been devolution of funds for maintenance & staff function areas?	
Madhya Pradesh	Gram Sabha
Chhattisgarh	The Gram Sabha has been entrusted with planning and management of minor water bodies in the Scheduled areas of Chhattisgarh
Odisha	Zila Parishads are empowered to plan and manage minor water bodies.
Maharashtra	Gram Sabha is expected to plan & carry out management of minor water bodies such as village tanks, percolation tank, minor irrigation projects, etc. The management of minor water bodies is entrusted to village Panchayats.
9. What is the legislative provision made in state Panchayat i Raj Act and subject Act about the grant of licenses or mining lease for minor minerals in the Scheduled Areas?	
Madhya Pradesh	Law has been amended and concurrence of Gram Sabha is necessary
Chhattisgarh	Chhattisgarh minor mineral Rules 1996 provide Gram Panchayats powers of 1. Identification of the mining area. 2. Seeking Gram Panchayat's opinion for consideration or granting license/mining lease. 3. Inspection and enquiry of accounts relating to leased and mining area.
Odisha	Licensing and exploitation of minor minerals and lease for minor minerals will require approval from the Zila Parishad.
Maharashtra	The Gram Sabha has to be necessarily consulted for grant of prospecting licenses or mining leases for minor minerals the Scheduled areas.
10. Whether Gram Sabha is empowered to enforce prohibition or regulate or restrict the sale and consumption of intoxicants in the PESA Areas? What system prevails	
Madhya Pradesh	Tribals in Scheduled Areas are authorized to brew own liquor subject to certain conditions.
Chhattisgarh	Gram Sabha is empowered to enforce prohibition or regulate or restrict consumption of intoxicant in the PESA Areas of Chhattisgarh.
Odisha	Gram Sabha in Scheduled Areas are empowered to enforce prohibition, regulate and restrict manufacturing, sale and consumption of intoxicants.
Maharashtra	For enforcing prohibition, the Gram Sabha has to resolve to the effect that consumption of intoxicants is totally prohibited.
11. What is the status of ownership of Minor Forest Produce in Scheduled Areas? If there is a MFP Federation, do the proceeds go to the GS/GP or shareholders in the cooperatives?	

What is the experience in this regard?	
Madhya Pradesh	Ownership lies with Gram Sabhas. There is MFP Federation that gives back the money collected from the sale of nationalized MFP to the individuals concerned.
Chhattisgarh	The MFP Federation has been setup in state under cooperatives Act of the State. The dividend and bonus is distributed to shareholders. The collection charges of the tendu patta are also distributed to the tribals who collect leaves. The experience is satisfactory.
Odisha	Ownership of MFP in Scheduled areas vests with GPs. Accordingly, 68 items of MFP have been brought under the control of Gram Panchayats to regulate the trading of these products.
Maharashtra	Though there has been a provision under section 54 A(f) of the Bombay Village and Panchayats Act, 1958, that the MFP would be owned and disposed of by the village Panchayat, this has not been happening in Maharashtra as village Panchayats are not yet strong financially to handle the collection and sale of MFP. In Maharashtra, Tribal Development Corporation has been entrusted with the purchase of 33 MFP to be collected and sold. The permission of rural development department is taken on behalf of all village Panchayats in the TSP area to ensure that the provisions of the Act are complied with. This is also done because the State of Maharashtra has already passed a legislation called Maharashtra Tribals Economic Conditions (Improvement) Act, 1976, which authorized the TDC for monopoly purchase of 33 items of MFP.
12. What is the role of Gram Sabha to restore any illegally alienated land of STs in Scheduled Areas?	
Madhya Pradesh	Land revenue code, 1959, amended to empower the Gram Sabha.
Chhattisgarh	The Gram Sabha has the power to prevent the alienation of land in the Scheduled areas and to take appropriate action to restore any unlawful alienated land in the Scheduled Areas.
Odisha	In the Scheduled Areas, restoration of unlawful alienated land belonging to a Scheduled Tribe person is done by the Gram Panchayat under the control and supervision of the Gram Sabha.
Maharashtra	Maharashtra has passed the following two legislations: (i) Land Revenue and Tenancy Act, 1974 and (ii) Restoration of Tribal Lands to the Tribal Act of 1976. As provided in these legislations, land belonging to the tribals cannot be transferred to non-tribals and if at all that has take place prior to 1974, it has necessarily to be restored to the tribal owner of the land. In exceptional cases, if it is given on lease to the non-tribal, permission of the District Collector or State Government is mandatory.

CHAPTER FOUR

CONTRIBUTION OF TRIBAL PARLIAMENTARIANS IN STRENGTHENING PESA

As mentioned in the early paragraphs, nine States in India have Fifth Scheduled Areas. Subsequent to passage of the PESA by the Parliament in December 1996, all these States made necessary amendments to their existing Panchayat Acts to facilitate implementation of the PESA provisions. While enactment of the PESA was long awaited, the tribal population in the Fifth Scheduled Areas also expected their representatives to resolve their problems.

Land alienation, lack of basic infrastructure and poverty are some of the most critical issues being faced by the tribal population in the Scheduled Areas. Against this backdrop, it is very pertinent and important to study the contribution of tribal Parliamentarians in the light of the PESA provisions.

This study is also important as many of the tribal Parliamentarians representing the Fifth Scheduled Areas started their political careers from the lowest tier of democratic ladder — the Gram Panchayats. The Fifth Scheduled Areas in the States of Madhya Pradesh, Maharashtra, Chhattisgarh and Odisha have representation of tribal leaders from the Fifth Scheduled Areas in both the Lok Sabha and Rajya Sabha. These leaders realize, understand and are well-acquainted with the challenges being faced by the tribal community. And as a Member of Parliament — the topmost ladder of the democratic structure — it is expected of these tribal leaders to address issues being faced by the tribal population on the Parliamentary platform. This ideal situation is possible if the tribals living in Fifth Scheduled areas are aware of PESA, their rights, and the opportunities to join mainstream development. In addition, they are able to take control of local resources, practise effective self-governance and preserve the tribal culture and traditions for which the PESA was enacted.

Four States — **Maharashtra, Madhya Pradesh, Chhattisgarh and Odisha** were selected for the purpose of this study. The reasons for selecting these States were as follows:

- **These four States have considerable areas under Fifth Schedule.**
- **The representation of tribals from the Fifth Scheduled Areas in the Parliament is maximum from these four States.**
- **Being adjoining States, many issues related to tribal population in Fifth Scheduled areas are similar and thus a comprehensive plan could help in strengthening the PESA in these States.**

Process of information collection about tribal Parliamentarians and the PESA and cooperation extended by them

To begin with, a list of tribal Parliamentarians (both from Lok Sabha and Rajya Sabha) was prepared. For understanding the tribal culture and issues and status of PESA, efforts were made to meet the tribal parliamentarians in their constituencies. There are about 22 tribal Parliamentarians from the states of **Maharashtra, Madhya Pradesh, Odisha and Chhattisgarh.**

An interview schedule was drafted for discussion with the Members of Parliament. While some of the Parliamentarians were interviewed during Parliament Session in Delhi, some of them in their constituencies. This researcher had initially proposed to meet these tribal leaders in their respective constituencies, but many MPs preferred to meet in Delhi citing their very busy schedule pertaining to election related work in their constituencies. The Parliamentarians were informed about the objective and the purpose of the proposed study and a copy of interview schedule was shared with them.

It was encouraging to find most of the Parliamentarians readily agreeing for the discussion and answering the questions. Only in case of two Parliamentarians (one each from Madhya Pradesh and Odisha) there was no response despite repeated and sustained efforts of the researcher to contact them and request them to share their views on the PESA.

While interviewing the Parliamentarians in their constituencies, the researcher also met with the people of the constituencies and gathered facts about the implementation of the PESA.

Discussion points with Members of Parliament

As stated earlier, the overall response from the tribal Parliamentarians was very positive. Though the researcher tried to meet them in their constituency, most preferred to discuss in Delhi, during the Parliament Session. The researcher could hold discussions with **8 MPs in their constituencies**, while the rest were contacted in Delhi. *Information regarding profile of Members has been sourced from the Who's Who Lok Sabha /Rajya Sabha.* The details of discussion with the tribal leaders in the Parliament from the Fifth Scheduled Areas are as follows:

4.1 Shri Gajendra Singh Rajukhedi | Dhar Lok Sabha Constituency, Madhya Pradesh

This is his third term in the Lok Sabha and being a tribal, he connects well with people of his constituency. His Lok Sabha constituency which covers eight State Assembly constituencies has a predominant tribal population with Bheel, Bijala being the common tribes here. Shri Rajukhedi is a zamindar of Rajukhedi village. Being a farmer, he understands the problems of the local people and likes to be identified as a tribal leader and not just as a Parliamentarian. Earlier, another tribal leader, Shri Shivbhanu Singh Solanki, who remained an MLA for over 50 years, was instrumental in bringing irrigation facilities to this region.

The Man river irrigation project has helped in reviving the agricultural scene of this region. Now, people can grow two crops annually due to the irrigation facilities here. Unlike in other areas, the local Bheel and Bijalas are engaged in agricultural activities and their economic situation is better as compared to their counterparts from other areas. According to Shri Rajukhedi, the main features of his constituency include:

- Rajeev Gandhi Rural Electrification Scheme is proposed to bring electricity to the remote villages here.
- Omkareshwar Irrigation Scheme will bring more areas under irrigation.
- He is proposing the formation of a new district — Manawar — which will reduce the distance between villages and the District Headquarters.

- The income limit for providing scholarship to tribal children should be increased so that they can avail the benefit of the Scheme.
- Water table in this region has fallen drastically. He has discussed the issue of bringing region under proposed Narmada Lift Irrigation Project with the Planning Commission.
- The discussion for setting up of a large-scale cement plant is going on and as there is ample availability of limestone and enough land. Most likely, the project will get through.

Social problems of the region

As found in most of the tribal regions, certain pockets here too are affected by the Naxalite activities where the tribals are engaged in anti-social activities. Naxalite activities were started here under the banner of Adivasi Mukti Sangathan. However, after having a dialogue with MP, they were persuaded not to join naxal activities. The MP has also initiated dialogue to stem similar naxal activities in other States such as Odisha.

The Sokha Police Station in this constituency registers highest number of murder cases in the country. But in most of the areas, the tribal people are not drawn towards naxalism or anti-social activities. This is due to their comparative economic well being and a similar economic status with that of the non-tribals of the areas.

About Gram Sabhas

The Gram Sabhas are not very strong as people do not attend their meetings and do not use their Constitutional right. As compared to men, women are stronger and more aware. Their presence in Gram Sabhas is more and they often ask questions related to education, communication, health, etc. Women from Padiyaal village took the first-ever initiative to ban alcohol and following their success, women from nearby villages too replicated this.

Shri Rajukhedi said that the power to the people is a good concept and as the tribal in the Fifth Scheduled Areas are entitled to use this power, non-tribal people should also have similar entitlements.

The traditional culture of the constituency

Nimadi is the most commonly spoken dialect of this region and many tribals do not know Hindi. Holi and Bhagoriya are the main festivals. Consumption of Mahua liquor is as common as is in any other tribal area, so much so that after the birth of a child, the newborn and the mother are made to taste Mahua liquor. Vegetable dye is made here and is used for printing fabric. This printing is known as Bagh print and is known for lasting and traditional colors.

Suggestions with regard to the PESA and for the welfare of tribal community

- The funds for tribal development should directly go to the District and Block Panchayats and the role of elected representatives at these levels should be defined to use these funds.

- The supervision and maintenance of hostels for tribal children should be given to elected tribal representatives.
- A separate head should be created to bring the tribals in the mainstream and upper limit to sanction loan or any financial proposal to tribals should be raised to Rs 1 crore.
- Banks hesitate to lend money to the tribals. This hesitation from the banking sector should be removed and tribals should not be discriminated.
- The tribal quota backlog should be immediately fulfilled.

Achievements

- The awareness among the tribals with respect to education is increasing as 13 tribal students were selected for the MBBS course last year (2011). Besides, many students are aspiring to join the civil services. The SP is a tribal from the region and there are a couple of civil judges belonging to tribals from the region. In few tribal families, children are encouraged to go abroad for higher education.
- Many tribal families have their own means of communication. Almost all the families of this region have motorcycles.
- Young men are interested in contesting Panchayat elections. Many young Sarpanchs have shown high level of commitment and are successful in mobilizing the local people for a good cause.

4.2 Shri Makhansingh Solanki | *Khargone Lok Sabha Constituency, Madhya Pradesh*

Shri Makhan Singh Solanki is a first-time Member of Parliament. He was elected from Khargon constituency in Madhya Pradesh in 2009. The constituency has a predominant tribal population with Bheel, Bilal and Varle being the prominent tribes in this constituency. The area coming under the Fifth Schedule includes Badwani, Rajpur, Panshemal, Maheshwar, Khargon and Sendhwa.

Political leadership profile

Shri Solanki was elected as Pati Gram Panchayat Sarpanch in Badwani block in 1980. He served as Sarpanch for three terms after which he was elected to Janpad Panchayat and became Badwani Janpad Panchayat President. He served this post for two terms and was then elected to Zila Panchayat. He is the first tribal MP from this constituency and likes to be recognized as a tribal leader.

His constituency covers eight Assembly seats of which four MLAs are tribals, two are general while two MLAs belong to the backward class. The former MP whom he defeated in the Parliament elections is now an MLA. Shri Solanki said he maintains a good network with the MLAs. He is a member of two Committees -- Energy and Rural Development.

Development work done in the constituency

Since this area is a backward area, basic amenities like electricity, roads, irrigation, etc. were poor. He strived for the electrification of villages in Khargon and Badwani areas on a priority basis. Under the MNREGS, funds were totally spent in Badwani district while in Khargon only 37% funds were spent. The work done under the MNREGS mostly includes digging of wells and other minor irrigation work. Irrigation is necessary in the region as many tribals are engaged in agricultural activities. Cotton,

gram, wheat, sorghum etc are the major crops here. There are no industries in the region except a few ginning mills as cotton is produced on a large-scale. He is also trying hard to get more proposals sanctioned under Indira Awas Yojna. Many tribal families are waiting to get benefit of this Scheme.

He has also proposed an agricultural university for tribal population here, though this proposal is still under consideration and he will follow it up with the State Chief Minister. The means of communications are not developed here and connectivity of remote villages with block or district headquarters is poor. Though roads are being laid under the Pradhan Mantri Gram Sadak Yojna, rail connectivity is absent. Railways will help improve the connectivity and the farmers and small-scale producers will be able to sell their products in distant markets. Shri Solanki said that he will make efforts to discuss the matter relating to rail connectivity and include it in the railway budget with the Minister of Railways.

Questions raised in the Parliament

So far, he has not raised any question in the Parliament concerning the welfare and development of the tribals of his constituency.

About Gram Sabha and power to people

Shri Solanki said that Gram Sabhas are mandatory for sanctioning of the proposals. However, the Gram Sabhas are not effective in his constituency. He was unable to cite a single example of a Gram Sabha which is effectively using their powers under the PESA and decide the roadmap for development. As regards participation of women and their leadership in the Local Self Government, he said there are some strong women who are taking up issues of local interest.

Suggestions and Recommendations

- The list of villages falling under the Fifth Scheduled Areas should be revised as a lot of demographic changes have taken place over the years and thus some villages may not qualify under the Fifth Schedule. Conversely, there are some villages which qualify to be included in the Fifth Schedule but are not included.
- The poorest of the poor should benefit from the Government Sponsored Schemes.
- Many industries are attracted to tribal belts, due to availability of land, water, forest and minerals and tribals get displaced. In most cases, the rights and entitlements of the tribals are not protected. The Gram Sabhas are not yet equipped to handle the issue of displacement.
- The displaced tribals should be satisfactorily benefitted.
- Events should be organized for promoting local folklore, culture and traditions.

4.3 Shri Basori Singh Masram | *Mandla Lok Sabha Constituency, Madhya Pradesh*

Shri Basori Singh Masram is elected to Lok Sabha for the first time from Mandla Constituency in 2009. His constituency covers 8 assembly seats — Mandla, Bicchiya, Newas, Dindori, Sahpura, Seoni, Kevlari, Lakhnadaun, Narsinghpur and Gotegaon.

Political Leadership Profile

Shri Masram started his political career as a Sarpanch and thereafter he became the Zila Panchayat Chairperson. He was also MLA and Minister in the State. He later successfully contested the Lok Sabha elections and become the Member of Parliament

from Mandla. He defeated another sitting tribal MP. He likes to be recognized as a tribal leader.

Being a tribal leader, he feels that he is neglected by the District Administration and his directives and concerns are not given due attention by the district administration. This creates a gap in information updates leading to delays and peoples' interests are affected. There are tribal MLAs in his constituency but differences in political ideologies create a hurdle in realizing democracy in its true sense.

About PESA

- Rising from being a Sarpanch to becoming a Member of Parliament, Shri Masram is well-conversant with the functioning of Panchayat and Gram Sabhas. He feels that though the PESA is strong and structured to give more authority to the people, in practice, the tribal community does not exercise the power given to them. He said that only the principal leadership (Chief Minister) in the state is highlighted under the various schemes sponsored by the Central Government.
- There is a need to rework the areas falling under Fifth and Sixth Schedules of the Constitution. There are areas where native tribals have migrated to other areas, and non-tribal population has increased and there are some areas with considerable tribal population that are not covered under Fifth & Sixth Schedules.
- The Panchayati Raj Institutions (PRIs) and the PESA are two Acts which make people's participation compulsory and advocate self-governance which form the crux of democracy. It must be strictly adhered to by the people having faith in democracy.
- Though the PESA gives special rights to tribal population in Fifth Scheduled Areas, Shri Masram is of the opinion that same powers should be given to non-tribal community as we are living in democratic republic and thus PESA-like provisions should also be extended to non-tribal areas beyond the Fifth Schedule.

Efforts taken by Shri Masram for the welfare of the tribal community

- 100-bed hospital at Dindori, approach roads, bridges and Panchayat buildings were sanctioned from the MP's fund for undertaking development projects.
- 300 tribal youths were selected as teachers from his constituency.
- 16 high schools were opened in his constituency.
- Making efforts to convert the narrow gauge rail line to broad gauge as he considers that railways will open avenues for marketing and big investment in the region.
- He is making efforts to get the Pendra-Shreedham rail line sanctioned, as the tribal community here has never seen a train and this will also bring improved connectivity to the region.

4.4 Smt. Jyoti Dhurve | *Betul Lok Sabha Constituency, Madhya Pradesh*

Smt. Jyoti Dhurve was elected to the 15th Lok Sabha in 2009 from Betul Lok Sabha Constituency. Smt. Dhurve is a postgraduate and entered politics as BJP Mahila Morcha President. Subsequently, she was elected as Block Panchayat Member in 1994 and served five-year term. She believes that there is a strong connection and coordination between the elected representatives in her constituency and as a result, there is no threat of Naxal activities like in other tribal belts. As State SC/ST

Commission Chairperson, Smt. Dhurve understands the problems of the tribal population. She likes to see herself as a tribal community representative and work for them in every way.

Constituency

Her constituency covers eight State Assembly Constituencies. Bhisdehi, Aathner, Bheempur and Shahpur blocks in her constituency are completely tribal-dominated and thus come under the Fifth Scheduled areas and the PESA is applicable here. In other parts of her constituency, 65% population belongs to tribals.

About the PESA

Smt. Dhurve says that the PESA appears very good on paper but on ground there is no implementation. She attributed this mostly to the lack of awareness about the provisions of the PESA among the tribals and also due to insufficient and slow efforts for the tribal welfare. The Constituency has predominant presence of Gond, Korku and Gaiki tribes and their representatives are elected at all the three levels of the Panchayati Raj Institutions. Even the post of the President is occupied by their representatives.

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Popularly known as Forest Rights Act)

The Forest Rights Act ensures ownership of forest land to the tribals. Smt. Dhurve said that she made efforts in implementation of the Forest Rights Act in her Constituency. Betul District is ranked first in Madhya Pradesh as far as transfer of forest land to tribals is concerned. She, however, felt that by mere transferring land to tribals is not enough. Along with the transfer of land, irrigation facilities should also be ensured so that the tribal families can practise agriculture. She is, therefore, trying to make efforts to cover these tribal families under the State Government's Kapildhara Scheme under which the State provides monetary assistance to dig a well.

Development and welfare efforts by Smt. Dhurve

- She demanded eight model schools from the State Government for her constituency so that the tribal students can avail better education and compete with the rest of the population. However, only three schools were sanctioned.
- After she raised a question in the Parliament, the Government increased the scholarship amount given to tribal students. She is unhappy with the quality of maintenance of hostels for the tribal students. Recently, she ordered that white wash and other repairs be carried out in the hostels in her constituency.
- She also got an ITI sanctioned for tribal students of her constituency.
- Under the Integrated Tribal Development Plan, Smt. Dhurve proposed construction of small bridges to improve the connectivity to remote tribal villages.
- Improving literacy, providing safe drinking water, electrification of villages, etc. are on the prime agenda of Smt. Dhurve.
- Year 2011-12 is being observed as 'Year of bamboo' by the State Government and thus efforts are being made to safeguard the rights of tribal communities on use of bamboo which is considered as minor forest produce. The PESA provides for rights of tribal community over minor forest produce.

- Cooperative societies such as Tendu Patta Sahkari Society have tribal people on board and the number of women in these committees is also noteworthy.
- In Madhya Pradesh, minor forest produce such as Mahua, Char, Nimboli, Harra and Beheda get minimum support price from the State Government and since the tribal communities have right over these produce, they benefit from this policy.

Suggestions to Strengthen PESA

- Smt. Dhurve plans to display the provisions of the Act in Panchayats and other common places in villages where the PESA is applicable.
- By using the freedom to frame the plan for the development and welfare of the villagers under PESA, Smt. Dhurve is already mobilizing women against alcohol and plans to strengthen this movement by seeking cooperation of the police.
- The tribal women are skilled and have great potential to improve their livelihood and status in the society. Thus, she plans to enhance leadership of tribal women through Panchayats and various cooperatives like joint forest committees, tendu patta, minor forest produce, etc.
- So far the large-scale investments from the private/corporate sector are not seen in Betul Lok Sabha constituency. Smt. Dhurve is of the view that exploitation of the tribal people by corporates should not be allowed at any cost. Still, if such investments are made, the rights and ownership of the tribals should be safeguarded.
- Discussions regarding extraction of coal from coal belts in this constituency are in progress. She said that such coal mines should employ only the tribal population.
- To encourage art and culture of the local tribal community, Tussar (kosa) production was recently started in Ghodadongri and Shahpur Blocks and wood carving is also promoted.
- To familiarize tribal community living in Fifth Scheduled Areas with the various policies, programmes, their rights, etc. she plans to conduct training and awareness programmes and would seek the help of the State.

4.5 Miss Anusuiya Uikey | *Member, Rajya Sabha, Madhya Pradesh*

Miss Anusuiya Uikey is a tribal Rajya Sabha Member and belongs to Chhindwara District of Madhya Pradesh. She is a postgraduate and also holds a degree in law. She also worked as a Professor in Government College.

Political profile

Miss Uikey was elected as an MLA and later elevated as a Minister in Madhya Pradesh. She was also a Member of the National Commission for Women and Chairperson, Madhya Pradesh State Commission for Scheduled Tribes.

Following issues were raised by her in the context of development of tribal region and welfare of the tribal population:

- In 2006, she raised the issue of displacement of tribals across the country due to development projects like dams, mining, power generation plants, industries, etc.
- The Forest Rights Act of 2006, which ensures the rights of tribal population over their forest land; the Bio-diversity Act and the Forest Conservation Act are related

to the lives and culture of the tribal population. Therefore, it is important to see that they are not alienated from the forests and the forest life.

- Despite the Forest Conservation Act, the forest cover is dwindling. On the contrary, in areas inhabited by tribals, the forest cover is maintained. This is due to the fact that the tribals derive their livelihood from the forest and hence they conserve forests. The Forest Rights Act should acknowledge the close link between the tribals and forests and that the tribals are not separated from the forests.

Regarding the Forest Rights Bill of 2006, Miss Uikey made the following suggestions:

1. The Bill mentions the formation of Monitoring Committee. However, the constitution of the Committee should be specified and should have one MP from Lok Sabha and one MP from Rajya Sabha. The State-Level Monitoring Committee should have representation of revenue department, tribal welfare department.
2. The machinery employed at the district level for the conservation of forests and forest lives should have reservation of 50% for the tribal community
3. The Government has declared 75 tribes as Primitive Tribal Groups (PTGs), thus the Bill should have special mention of these PTGs.

Miss Uikey made a special mention on August 4, 2009, regarding the need to extend the benefit to all Bharia tribes living across Madhya Pradesh. In response, the Union Minister of Tribal Affairs, Shri Kantilal Bhuria said that the Government has already requested the State Government to look into the matter. State Tribal Research Institute was conducting a survey of the backward classes, Bharia, Baiga and Sahariya tribes in Madhya Pradesh. Based on the survey, the State Government will take a decision on extending facilities to other backward classes in the State. Presently, the Bharia tribes in Patalkot region of Chhindwara district get the benefit of the special scheme for PTG.

Questions raised by Miss Uikey during Zero Hour (August 1, 2010)

The SC-ST Commission is constituted as per Article 338 of the Constitution. The annual report of the Commission is presented to the Parliament. The term of this Commission expired on May 24, 2010. The Commission was not re-constituted even after passage of three months. Miss Uikey requested for the reconstitution of the Commission.

The the PESA Implementation Status

Miss Uikey said that the PESA is a powerful Act and gives power to the people to decide about their development plans and govern themselves. However in practice, it is observed that the tribal population living in Fifth Scheduled Area is unaware of the rights and scope of self-governance as provided in the PESA. The elected representatives of Gram Panchayat, Block Panchayat and District Panchayat too are not aware of these provisions. Thus, there is a need to make the provisions of the PESA known to them. The Madhya Pradesh Government recently undertook a the PESA orientation programme for the tribals.

4.6 Shri Vishnu Deo Sai | Raigarh Lok Sabha Constituency, Chhattisgarh

Shri Vishnu Deo Sai is serving his third term in the Parliament as a Lok Sabha Member. His grandfather Shri Buddha Deo Sai was nominated as an MLA and his uncle was also an MLA. He has political background and was elected as an MLA two terms from Raigarh from 1990-1998 in undivided Madhya Pradesh. In 1998, he contested Lok Sabha elections and since then it is his third term in the Lok Sabha.

About Fifth Scheduled areas of his constituency

Parts of Raigarh District (Lehlunga, Dhrmandeogarh, Kharsiya, Karghoda blocks) and whole of Jashpur District come under the Fifth Scheduled Areas. Kanwar, Gond, Uraon, Korva Bihor, Bheel, Bilala are the prominent tribes here. Korva tribe is a Primitive Tribal Group (PTG) and receives special privileges from the Centre to save the tribe from extinction.

Development work executed for the welfare of tribal community of the constituency

Shri Sai listed out the following development works being completed/initiated by him and the State Government during his tenure:

- In Chhattisgarh, two tribal welfare Commissions were formed for Bastar and Sarguja Districts about eight years back and are headed by the Chief Minister. These Commissions take care of the tribal welfare in these districts and get funds from the State to undertake development related work like roads, electrification, irrigation facilities, community hall, etc.
- The Chief Minister Khadyanna Yojna covers families under BPL (as per the 1992 and 1997 surveys). About 30 million families of the State are covered under this Scheme.
- For school going kids, the State provides books, school uniforms and bicycles.
- The State Government has also planned one primary school at each kilometer, one high school at every 5 kilometer and one college at every block to promote education amongst the tribal community.
- Though the State Government is encouraging tribal youth for jobs like airhostess and pilot, no tribal girl or boy from the State has yet taken up the same.
- The State has also floated a Scheme, namely Sanjeevani Jeevanrekha Kosh under which the BPL families are provided help to treat cardiac and hearing related ailments. There is a provision of round-the-clock ambulance which is available on call.
- For securing employment for tribal youths, the State reserved 2,00,000 seats for the post of Shiksha Karmi and for class I, II, III grades in the State Government posts.

4.7 Shri Murarilal Singh | Surguja Lok Sabha Constituency, Chhattisgarh

Shri Murarilal Singh is a first-time Member of Parliament. He was earlier elected as an MLA in 1990. Later, he took a break from mainstream politics for about 14 years and worked for the Rashtriya Swayamsevak Sangh. During his tenure as a Swayamsevak, he worked in remote tribal villages of Raigarh District, which helped him understand the problems of the area and brought him closer to people. He also served as Chairman, Madhya Pradesh Minor Forest Produce Committee.

His constituency Surguja is a total tribal district under Fifth Schedule. Gond, Kanwar, Uranv, Birhor, Pinjwara, etc. are the main tribes in his constituency. Korku tribe also lives here, however according to Shri Singh, most of the Korku tribe has embraced Christianity. Nagisiya Kisan is another local tribe which is not included in the list of Scheduled Tribes. However, Shri Singh is perusing the demand to include this tribe in the ST list. Thus, a team is visiting the area to survey after which a decision will be taken.

Development effort for the local tribal community

- In terms of education, this Constituency is very poor and students have to travel long distance to pursue higher education. With the help of RSS, Shri Singh has tried to open primary schools in villages known as Gram Bharti.
- There was no engineering or medical college in his Constituency and thus a majority of tribal students had no opportunity to study these courses. With Shri Singh's efforts, the first Government engineering college has started here.
- The health infrastructure too is very poor. There are no medical officers in PHCs, and the PHCs are run by nurses. He is trying to have one medical college in the constituency so that local people become doctors and serve in PHCs.
- Shri Singh plans to use the Backward Region Grant Fund (BRGF) for the construction of hospitals and PHCs in his constituency.
- Migration of local tribal in search of employment has reduced considerably, and the credit for the same goes to the MNREGS.
- Surguja is the lone district in the State which grows wheat, potatoes and paddy. The irrigation facilities are better and farmers help themselves in irrigating fields and get a good yield. Most of the tribal community too is engaged in agriculture.

About PESA

Shri Singh said that though the PESA is a very powerful act, it is not effective on ground as people are not aware of its provisions and they still feel that they are governed by the State or the Centre and not by themselves.

Shri Singh had a major role in organizing a huge conference in Raipur which discussed the land rights of the tribals. Millions of people gathered and after which the process of land transfer from non-tribals to tribals was accelerated. This also benefitted a tribal MLA as he got back five acres of land. On the lines of Madhya Pradesh, Chhattisgarh too is trying to bring amendment in the existing law to make the PESA applicable. However, Shri Singh had no detailed information about it.

About Gram Sabha in the PESA region

People do not gather for Gram Sabhas in large numbers. The naxalites also discourage them to participate in Gram Sabhas. However, with BRGF and MNREGS, each Gram Sabha has got Rs. 5 lakh sanctioned for various work.

His constituency has some Tibet refugee population which is governed by their separate commission. This commission runs higher secondary school for the Tibet refugee children. However, Shri Singh feels that local non-Tibet refugee students should also be allowed to study in this school. Shri Singh said the presence of missionaries in his constituency is high and they have taken land from the local tribal and are using it. He has sought the intervention of the State Governor in this context,

who has special power in the PESA and requested him to help the tribals to get their land back. The structures and buildings constructed by the Christian Missionaries should be taken over by the State. There has been no success so far in this connection.

Suggestions and Recommendations

Shri Singh provided following suggestions and recommendations with respect to the PESA and welfare of the tribal community:

- The reservation for Scheduled Tribes in employment and education should be monitored and backlog filled.
- The State Government should play a proactive role in safeguarding the tribal culture.
- The traditional crafts and artisans should be protected by the State.
- The tribal population does not believe in practices such as female foeticide, dowry system, etc. By nature, the tribal community is happy with what they have today; they have no instinct to save or earn for tomorrow.
- Though primary schools have better coverage, there should be more provision for higher schools and hostels for tribal students, especially girls.
- The process of land transfer from non-tribal to tribal should be accelerated in the State.
- The naxalites from adjoining states of West Bengal and Jharkhand are entering Chhattisgarh and promoting naxalism. The naxalites are successful in creating terror in the local people. They collect money from the local contractors and business people, however, the local naxalites do not get share from this. As a result, many have quit naxalite activities. Earlier on Independence Day, the naxals did not allow hoisting of national flag. However, now the situation is improving.
- He said that opportunities for discussion or to raise questions in the Parliament are not enough. So far, he said, he has not been able to raise a starred question in the Parliament. He said that time should be slotted in Parliament for discussions and raising questions for first time MPs.

4.8 Shri Nand Kumar Sai | *Member, Rajya Sabha, Chhattisgarh*

Shri Nand Kumar Sai was first elected as Member of State Legislative Assembly (in undivided Madhya Pradesh) in 1977 and again in 1985. He was also the Leader of Opposition in the State Assembly. He successfully contested the Lok Sabha elections from Raigarh for two consecutive terms. He contested Lok Sabha election from Surguja constituency and won. He was a Member of 9th, 11th and 14th Lok Sabhas. He was elected as Member of Rajya Sabha from Chhattisgarh for half-a-year term, and later re-elected for a full term in June 2010.

Besides, during student days, he was elected as the President of N.E.S. College Students Union in 1972. In his early days of leadership, he took up the issue of alcoholism with his Nashamukti Abhiyan (anti-liquor campaign) on a large-scale in tribal belts in the Fifth Scheduled Areas of Surguja District of the undivided Madhya Pradesh. He was framed in many Police cases. He attributes the success of his leadership to the various campaigns he undertook for the upliftment of the tribal community of Surguja.

About PESA

Shri Sai, with great pain, said that the PESA is enormously violated in the State of Chhattisgarh. The Gram Panchayats are being converted into Nagar Panchayats. Since there is no Act to govern the urban local governing bodies in the Fifth Scheduled Areas, the State Government is bringing more Panchayats into urban areas and there is a large-scale exploitation of natural resources from these areas, which are increasing pollution and subsequently the living condition of the tribal area is deteriorating day-by-day.

He said that the Ministry of Mines is bringing a Bill which, if enacted, will treat the tribal people as shareholders in case a mine is permitted on their land. Shri Sai expressed his concern over the depleting natural resources in the Fifth Scheduled Areas and the alienation of the tribal population from their natural habitat. He also expressed his concern over the issue of reservation for tribals in State jobs.

The PESA provides for self-rule and that Panchayats and Gram Sabha in the Fifth Scheduled Areas are empowered to take decisions for their development and without their permission no development project can start nor any land can be acquired. Despite these provisions, the status of primary education is very poor and basic infrastructural facilities like road, electricity, drinking water, etc. are not being provided in the Fifth Scheduled Areas.

He also talked about Special Economic Zones (SEZs). Most SEZs are proposed in the tribal areas as these have abundant natural resources. Shri Sai was not in favour of SEZs and instead suggested setting up of SAZ (Special Agricultural Zones). Shri Sai appreciated the tribal tradition which promotes conservation of natural resources and adhere to the principle of gender equality.

However in recent times, non-tribal culture is invading tribal culture and there are instances of tribal girls being pushed into flesh trade. Poverty among the tribals is responsible for large-scale displacement of tribal people in search of employment. Shri Sai said that the leadership of the present day has no vision and as a result, useful acts like the PESA are not proving effective.

4.9 Shri Marotrao Sainuji Kowase | *Gadchiroli-Chimur Lok Sabha constituency, Maharashtra*

Shri Marotrao Sainuji Kowase is a first-time Member of Parliament and is elected from the Gadchiroli-Chimur Lok Sabha Constituency. The restructuring of the constituency allowed him to successfully contest the Lok Sabha elections. Earlier, he served three terms as a Member of Maharashtra Legislative Assembly and was also Minister for Tribal Welfare in the State. There are six Assembly Constituencies in his constituency and has three tribal MLAs. Thus, there is a fair representation of tribal leadership.

Political Career

Shri Kowase studied at Nagpur and did his postgraduation in Political Science from Nagpur University. In his student days, he was a member of Adivasi Vidyarthi Federation which offered him an opportunity to understand the problems and concerns of the tribal people. Being an active member of Adivasi Federation, he travelled to various tribal dominated villages of Gadchiroli and Chandrapur Districts. He is also President of Adivasi Vikas Jungle Kamgar Sangathana and was District President, Congress Party, Gadchiroli.

A strong foothold and understanding of issues of the common people helped him win the Lok Sabha elections, he said. Another reason the voters had confidence in his leadership was due to the fact that there had been no change in the leadership for long as well as the leadership was non-tribal. Thus, the people of his constituency, mostly tribals, showed faith in the tribal leadership. For the development of local tribals, he made use of the special package which made him popular amongst the local voters.

About Fifth Scheduled areas of The Constituency And Problems

Gadchiroli is a tribal district and was constituted only few years ago. Earlier, it was a part of Chandrapur District and thus the development of the district was very slow, given its vast area and rich forest cover.

Etapalli, Aheri, Dhanora, Kurkheda are the completely tribal dominated blocks while Gadchiroli, Armori, Chamorshi are partly tribal in the Fifth Scheduled Area. These blocks of Gadchiroli District are spread in Gond, Korku, Bheel, Bharia, Halba are the prominent tribes here, while Madia Gond is the Primitive Tribe. Incidentally, Shri Kowase belongs to Madia Gond Tribe.

Like other tribal areas, lack of infrastructure hinders development here too. Difficult terrain, thick forest cover and administrative lethargy have been responsible for the slow development of the area. Lack of health, school facilities in distant villages, etc. acted as a deterrent for the local tribals to pursue academics. Most tribals are engaged in agriculture and many are dependent on forest produce for earning livelihood. Displacement for seeking employment is comparatively less. However, the tribals of this area migrate to work as labourers in the coal belts of Jharkhand and Odisha.

Naxalism is the main concern of this area and despite lots of efforts by both the State and Central Governments, there is no visible change in the naxalite activities here. According to Shri Kowase, the reason for growing naxalism is that the problems of the local people are not addressed. The Guardian Minister of the district is also the Home Minister of the State of Maharashtra. Still, there is no check on growing Naxalism. Recently, there has been lot of cases of abduction and murder of elected representatives of this area. As a result, the elected representatives resigned and it is difficult to provide them security and revive their confidence in democracy.

Work done for the development of the constituency

Being a three-term MLA and Congress District President, he is aware of the problems of the local people and listed out the following work done by him for the development of his Constituency:

- He sanctioned the construction of libraries and Samaj Mandirs from his discretionary fund in the remote villages of his Constituency.
- The Gondwana University was established in Gadchiroli due to the efforts made by Shri Kowase. Now, he is making efforts to bring a medical college in the district, so that there will be local doctors who will be ready to work in local hospitals.
- He also encouraged the construction of hospitals and roads with the help of Border Roads Organisation (BRO).

- Recently, the Railway Ministry has sanctioned the Wadsa-Gadchiroli railway line and efforts are going on for sanctioning Deori-Sironcha National Highway. Once this highway is built, the Naxal-affected areas of four States, namely, Maharashtra, Chhattisgarh, Odisha and Andhra Pradesh will be connected.
- The MP has suggested to the Gondwana University to start courses which are based on the study of forest. As many people of the area are dependent of forests for their livelihood, it will be a good value addition to their traditional knowledge.
- A project of extracting iron ore in his constituency is awaiting sanction from CM's Office. He is exploring the possibility to start industries based on forest produce such as Mahua, Gum, etc. which are available in abundance and have rich nutritional value.

Suggestions about PESA

While talking about PESA, Shri Kowase said he has never been invited for any meeting on the PESA either by the Governor or the CM -headed Tribal Advisory Committee. The PESA delivers power to the people. However, there is lack of initiative from the tribals to use the powers under the PESA. Many elected representatives are unaware of the provisions of the PESA. Even Shri Kowase had limited knowledge about the PESA. He made the following suggestions so that the PESA can be a solution to the existing problems:

- Since most tribal people of this constituency are engaged in agriculture, the emphasis should be on sanctioning irrigation schemes.
- The forests in the Fifth Scheduled Areas and the Forest Rights Act also made the role of tribals in these forest areas important for forest conservation. However, there is no water supply to conserve the forest cover.
- The Schemes and Programmes which are planned and executed for the development of the local area, the need of the local people should be the top priority while designing these programmes.
- The Schemes of distributing livestock to the tribal should be replaced by industrial development. Unless there is industrial growth, there will be no prosperity and development in the area.
- Minor Forest Produce Rights of tribals in Fifth Scheduled areas include right to sell bamboos which was given to the tribals due to the intervention of the then Minister of Rural Development, Shri Jairam Ramesh.
- Regarding the slow implementation of the MGNREGS in the District, Shri Kowase said that it is difficult to implement the scheme due to Naxal terror among the villagers. There has also been lack of coordination amongst various Government Departments. For example, a plan to lay roads is obstructed by the forest department. Thus, in the absence of roads, the development of the district is very slow.

4.10 Shri Sohan Potai | *Kanker Lok Sabha constituency, Chhattisgarh*

Shri Sohan Potai was first elected to Lok Sabha in 1998 and has since then won three consecutive terms. Presently, he is serving his fourth term in the Lok Sabha.

In his college days at Raipur, he was associated with students' movement and was a Rashtriya Swayamsevak Sangh member. This helped him in

establishing his leadership in the constituency. Before his election as a Member of Parliament, he had no prior experience as an elected representative and served in the Postal Department for 17 years. Shri Potai was declared as the most travelled Parliamentarian in his constituency.

About the constituency

Kanker Lok Sabha constituency is a tribal constituency and covers 8 assembly seats. Kondagaon, Dhamtari, Bhanupratap Pur, Balod, Kanker Sihava, Dondi Lohara etc. are some of the district and block places in his constituency.

Work Done by Shri Potai

- Since many parts of his constituency are located in difficult terrain, there was acute scarcity of drinking water. The tribal population has a characteristic of staying in small hamlets. Thus, making provision of drinking water was one of his priorities and now water scarcity in these difficult areas has been resolved to some extent.
- Promotion of education was also his priority and thus he worked for sanctioning of schools in his constituency. He sanctioned funds for school buildings, labs, sports material, libraries etc.
- The tribal population in Kanker constituency is sporadic and thus establishing connectivity through roads and means of transportation were also part of the development work of Shri Potai.
- In Kanker District he has set up a library, which contains books on curriculum and also for competitive exams. This apart, coaching classes are also organized at this library. This library charges Rs.150 per month from the users and is now self-sustaining. Even the district administrative personnels offer voluntary services in the form of coaching to students here. By using the library and coaching facilities, the tribal students of his constituency have become teachers, IAS and IPS officers. This year, 159 students of his constituency have cleared the IIT/AIEEE exams.
- He initiated the Raoghat Pariyojana, an ambitious scheme aimed at extracting iron ore. A Pundi-Kanker rail line is also proposed to improve connectivity in the region.

Problems in the constituency

While discussing the main problems of his constituency, Shri Potai singled out naxalism as the main problem of his constituency. Due to this problem, no development is taking place here and the region is moving backwards. The local tribals who wish to protest Naxals, are either murdered or are grievously punished by the Naxals. Thus, the common people are terrified by Naxals and have no alternative but to live with this problem.

Crime in the region is on the rise as all the criminal activities are clubbed under the umbrella of Naxal activity; and thus, there is rise in cases of corruption, extortion etc. The Naxal activities started in this region in 1982 when local people were put to trouble by the forest officials and Patwaris. The Naxals supported the local people and received cooperation from them. Slowly, the local people were trapped in such a situation where they had no option but to accept the Naxalites' demands. Shri Potai says military operation is the only answer to root out the Naxals. Once Naxals are ousted from the area, they will not return as the local people are now aware that Naxals will exploit them and not help them.

Unemployment is also a major problem here, as schemes like MGNREGS are not effectively implemented due to Naxal threats forcing the local tribals to either migrate or live in utter poverty. According to Shri Potai, posing restrictions on local people against helping Naxals is no solution. Instead, there is need to change the mindset of the people.

Suggestion about the PESA implementation

Shri Potai expressed the view that it is the primary responsibility of the elected representatives to monitor smooth implementation of all the laws. He was aware of the provisions of the PESA and made the following suggestions:

- There are Minor Forest Produce Committees already formed in the State. There is representation of tribal people in these Committees. The decision making authority should be entrusted to the tribals only.
- On the lines of the Minor Forest Produce Committees, the State is planning to form Minor Mining Committees. Here too, tribals should be involved and the decision making authority should be entrusted to the tribals.
- The Adivasi Salahkar Parishad is constituted at the State level and the Chief Minister consults members of this Parishad periodically.
- The elected representatives, starting from a Member of Parliament to a local Sarpanch, should oversee effective implementation of laws. With the PESA in place, it is the duty of the elected representatives as well as the bureaucrats to implement it.
- Under PESA, the State Governor is supposed to submit a report to the Centre on the status of tribals in the State and the PESA implementation related issues. However, so far, no Governor in the State, since its formation in 2000 has prepared or sent such a report. Shri Potai suggested that the State Governor should consult tribal leaders while preparing the report.
- Kanker, which is a tribal constituency, was declared a general constituency. Therefore, Shri Potai met the then President, Shri APJ Abdul Kalam and explained the nature of the constituency and succeeded in maintaining the tribal status of the constituency.
- There is a lot of forest owned land on paper. However, as the forest cover depleted, there is a need to look into the matter of this forest land, as no development work can be initiated on forest land. On the contrary, there is construction activity on forest land. At some places, Government buildings occupy forest land. Thus, to rule out the discrepancy and illegalities, a move is on at the State level to convert the forestland into revenue land where there is no forest today.

4.11 Shri Baliram Sukur Jadhav | *Palghar Lok Sabha Constituency, Maharashtra*

Shri Jadhav was elected to the 15th Lok Sabha in 2009 and is one of the four tribal Parliamentarians elected from Maharashtra. In the delimitation of Lok Sabha constituency, one more constituency was created. Now his constituency has Palghar, Jawhar, Mokhada, Talasari, Wada and Vikramgarh blocks of Thane

District under the Fifth Schedule. A farmer by profession, Shri Jadhav could not complete his education beyond secondary school.

Political Career

Shri Jadhav was Sarpanch of his native village Saiwan for 17 years (1974-1997). His long stint as a Sarpanch helped him to understand local issues and build connections with people. He was then elected as Panchayat Samiti President after the 73rd Constitutional Amendment came into effect. After serving one year, he was elected as President, Agriculture Produce Marketing Committee for the next five years.

Palghar constituency has given four tribal Parliamentarians, but people of the constituency were not happy as their problems remained unresolved. These Parliamentarians were representatives of national parties, including INC, BJP and CPI(M). At the time of elections to the 14th Lok Sabha, there was a growing demand from the local people to elect a person who understands their issues and thus a local group called the Bhaujan Vikas Aaghadi, initially with the support of INC, fielded Shri Jadhav. While stating this, Shri Jadhav said that being a true representative of local people, he could counter his opponents and got himself elected. Shri Jadhav is the only representative of this local party and thus struggled a lot to make his voice heard in the Lok Sabha.

Work done

- He started a bus service for the first time in the area, which helped students as well as the farmers to connect with nearby urban areas for education and market.
- He connected with local people and tried to solve their problems.
- There is still no electricity in many villages of Jawhar block of Thane District. He has already brought many villages under electrification and many more will be electrified under the Rajiv Gandhi Rural Electrification Scheme.
- 80% of his development funds are spent on tribal blocks. Palghar constituency has a combination of highly urbanized blocks and remote blocks. Shri Jadhav purposely decided to spend more money on the tribal remote blocks.
- Provision of drinking water was done on top priority from the development fund, as water from remote villages of his constituency is supplied to nearby urban areas.

Problems of tribal people of his constituency as identified by Shri Jadhav

Shri Jadhav has experience of about 38 years in representing tribal people's concerns on various platforms. He was also a member of Adivasi Ekta Parishad and mobilized tribals on various issues. He has a fair understanding of local issues.

- The tribals reside in remote region and have limited livelihood options. As a result, they migrate seasonally or for long periods to various locations. Tribals of Palghar constituency usually migrate to nearby Mumbai suburbs or Gujarat, and therefore any effort to bring development in the constituency is not sustainable.
- The issue of land acquisition for proposed Dahanu-Uran corridor had agitated local tribals. No consent of Gram Sabha was sought. Thus, instances of illegal land acquisition are high in the constituency, and people are unaware of the PESA.
- Shri Jadhav and local people are opposing the proposed Pinjal dam in Palghar.

- The cases of pseudo tribals are on the rise, who are denying the genuine tribals their rights and privileges. The Caste Verification Committee, which has very limited strength, is burdened with innumerable cases of caste verification. So, there are many cases where the tribals lose jobs, and fake tribals even get elected from the seat reserved for a tribal candidate.
- Limited opportunities in higher education is a hindrance for the development of the region. Though Palghar constituency is located close to Mumbai, in the absence of easy and cheap modes of transport, it is extremely difficult for the local people to commute to Mumbai. The demand to increase train frequency and extending local train service has not been met so far.

About PESA

Shri Jadhav, though active in politics for long and acquainted with tribal rights and privileges, is unaware of the PESA. Even people of his constituency are unaware of the PESA.

When explained about the PESA provisions, Shri Jadhav said that the Gram Sabhas are held only on paper. Villagers attend Gram Sabhas only when they see some benefit. The Sarpanch and Gram Sabhas work under the pressure of the local mafias with vested interest in extracting sand, wood and other forest produce. Since Gram Sabha is not aware of its powers, its consent is taken on paper to fulfill the formality.

When asked if the Governor of the State has called any meeting to discuss the implementation of the PESA, he said that not a single such meeting was convened. The State Chief Minister has to constitute a committee namely, Scheduled Caste Advisory Committee. The meeting of this committee should be convened by the Chief Minister regularly. However, Shri Jadhav said that no such committee was formed and he has ever been invited to such meeting.

Recommendations about the PESA

Though Shri Jadhav is not aware of the PESA, he could give the following recommendations:

- Awareness about the PESA should be created on a large-scale. Shri Jadhav was critical of imparting training to the elected representatives, as according to him, there are very few genuine people's representatives and thus investing in them by imparting training may not be useful. Thus, people should be empowered by broadening their knowledge and information base.
- The Tribal Sub Plan (TSP) has lots of funds and most of their expenditure rests with the bureaucracy. Thus, TSP should have special provision for the PESA areas.
- An amicable solution should be worked out in cases of land owned by tribal people residing in urban areas. In these cases, such plots are often converted into dump yard and later the land mafia acquire these plots. Thus, in special cases, the sale of land by tribal to non-tribal should be allowed.
- In case of land acquisition by the Government and private parties, the Government should make it mandatory for Gram Sabhas to take decision. These Gram Sabhas must be attended to by a senior/responsible official of the revenue department who

should be responsible to protect the rights and privileges given to Gram Sabhas under the PESA.

- During census survey, many tribal people who migrate for earning livelihood, are often left out and are denied rights as citizens. To address this issue, the concerned Government official should be made responsible to cover all the migrated tribal population. The official's failure to do so should be considered as a criminal offence.
- With respect to the Forest Rights Act, the tribals should first protect the forests and then should establish their Forest rights.
- Under PESA, there is enough scope for development of tribal leadership, thus tribal leadership should be nurtured and given freedom. Under any influence or pressure, the tribal leadership cannot develop.
- The problems and concerns of tribal are addressed by non-tribals. But if tribal leaders start fighting for their rights and privileges, the picture may be different.

Questions raised in the Parliament

Shri Jadhav raised the following questions regarding tribal issues in the Parliament:

1. **April 2012:** Need to improve telephone, internet services in Palghar constituency. In the absence of no or interrupted telephone and internet facility, tribal children often lose the opportunity to get admission on time as nowadays most admissions or applications need to be submitted online. The BSNL telephone owned by Shri Jadhav works only for a month in a year. There is a need to rectify the connectivity problem.
2. **May 2012:** Shri Jadhav demanded for representation of ST in Lokpal Bill, which was accepted.

4.12 Shri Harishchandra Deoram Chavan | *Dindori Lok Sabha constituency, Maharashtra*

Shri Harishchandra Deoram Chavan was elected to 15th Lok Sabha from Dindori tribal constituency of Maharashtra. He is the only tribal Member belonging to the BJP, who has Fifth Scheduled areas in his constituency in Maharashtra.

Political profile

A graduate in English, Shri Chavan was one of the two students to complete graduation from his Surgana block (100% tribal block of Nasik district). His political career started with his election as a member of Maharashtra Legislative Assembly in 1995. He was elected to the Lok Sabha in 2004 and again in 2009. He is also member of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

Fifth Scheduled areas of Dindori Lok Sabha constituency

Peth, Surgana, Kalvan, Dindori are the tribal blocks covered under the Fifth Schedule, while Igatpuri and Baglan Blocks are partially covered under the Fifth Schedule.

Problems of tribal people in the constituency

The Dindori constituency is located close to Mumbai-Thane-Surat industrial belt. Thus, the issue of illegal acquisition of land owned by tribals is the main concern here. There is a great escalation in land cost, and as a result, the agricultural land

which doesn't yield crop not worth of even Rs 10,000 is sold for as high as Rs 3.5 lakh per acre. Thus, lured by high returns, there is a trend among the poor tribal farmers to sell their land. As per law, the land belonging to a tribal cannot be sold to a non-tribal but rich non-tribal people buy the land in the name of tribal persons employed with them.

Once the land deal is sealed, further procedure of acquiring non-agricultural certificate is done and finally the land becomes redundant for agricultural use. In this process, both the land owner who sells the land and the person in whose name the land is purchased, both are cheated. Such land deal is finalized quickly and increasing on a large scale. Today less than 10% tribal people of this constituency have land ownership. When there is no land left for agriculture, there is no option before the tribal community but to migrate to the nearby industrial town for employment. This large-scale migration has led to many social problems of the tribal community.

In the absence of proper planning and irrigation facilities, there is water scarcity. Though many places of this constituency receive good rainfall, in the absence of plans to retain the water, drinking water remain scarce. Surplus water from rivers and dams is supplied to Mumbai and Thane metropolitan cities.

Development work done by Shri Chavan

From his development funds, Shri Chavan has sanctioned small irrigation projects. He feels even small budget of Rs. 5 lakh will help the rural people to construct small check dams or cement dams. Thus, his development fund is mostly used for irrigation projects.

Education is Shri Chavan's second priority and he feels that there is lot of improvement on the education front. The educational facilities and the provision for scholarships encourage tribal students to take up education seriously. Last year, one tribal student had gone to the US for his doctoral studies. However, a lot of efforts were required to finance his studies from the Government. Shri Chavan often discusses the problems of his constituency with the Minister of Tribal Affairs. He also raises the issues in the Parliament during Question Hour and other debates.

Suggestions for improving the status of tribal community and the PESA provisions

According to Shri Chavan, the Ashramshalas in Maharashtra are becoming the lodging-boarding house for tribal students and that is because the Ashramshala staff is not permanent and thus, are not able to discharge their duties properly. As a result, tribal students staying in these Ashramshalas are grossly neglected. If the Ashramshala staff is treated as permanent government staff, the status of the Ashramshala will improve.

- There is a need to have a special cell in Zila Parishad Education Department to take care of education related issues of tribal population only.
- The Joint Forest Committees which are formed after the passing of the Forest Rights Act, 2006 are not able to fulfill their task. The reason for this could be political rivalry or that these committees are not aware of how to execute powers entrusted to them or their decisions are not followed by the administrative machinery.
- There is need for coordination between various Departments, Ministry of Tribal Affairs and the elected representatives.

- The tribal leaders are also responsible for the denial of rights to the tribals. Thus there is need to promote good leadership skills in the tribal population.

4.13 Shri Jayaram Pangi | *Koraput Lok Sabha constituency, Odisha*

Shri Jayaram Pangi, a tribal, represents Koraput Lok Sabha constituency and is a first-time Member of Parliament.

Political career

Shri Pangi started his political career in 1997 as a Member of Odisha State Assembly and was elected for four consecutive terms. He served as State Minister for Agriculture and Excise and was also a member of the Committee on Forest Protection and Panchayati Raj. He was also the Chairman of State Scheduled Caste and Scheduled Tribe Committee.

His vast experience in the State electoral politics and decision making bodies helped him in understanding tribal issues. The Koraput constituency is an old tribal constituency and even today many parts of this constituency are predominantly tribal.

About the constituency and problems of the constituency

Koraput is a tribal-dominant constituency and many primitive tribes still live here. Most of the part of this constituency falls under the Fifth Scheduled areas. Given the difficult terrain in the constituency, means of communication have not yet reached many parts. Thus, contacting constituency people from such areas is difficult.

With respect to implementation of the MGNREGS, Shri Pangi said that there are many problems involved in the implementation of the MGNREGS. In Kashipur area, about 5,000 people were issued job cards, but in practice, only 1,300 people got 100 days of work. There are some administrative lacunae which create hurdle in the implementation of the Scheme. Besides, there is a lot of seasonal outward migration of local tribals, which also causes delays in the implementation of schemes.

Shri Pangi said that prior to the MGNREGS, the scheme namely, Food for Work was better implemented in the State, as it attracted more people for work. Under MGNREGS, payments are delayed and thus less people are interested to work.

Shri Pangi has spent most of his development fund for improving healthcare in his constituency. Construction of community hall, school and college building are the other areas in which he has spent discretionary funds.

Integrated Agriculture Programme, Backward Region Grants Fund are the other schemes for tribal development and welfare in Koraput constituency. Shri Pangi also shared that now there are less hurdles in the implementation of development projects like construction of road, dam, bridge, etc. and therefore, development is faster. However, the difficult terrain and growing Naxal activities pose a hindrance to faster growth.

Suggestions about the PESA and for tribal welfare

Shri Pangi did not comment on the state of implementation of the PESA in the State. However, he made the following suggestions:

- Acts like the PESA give powers to elected representatives, but at the implementation level, these powers are not given to the elected representatives.

- In the Fifth Scheduled areas it is the administrative authorities who decide the governance of the area. However, the administrative authorities are not aware of the local issues and thus concerns of local people are not reflected in the plans prepared by them.
- The Central Government should give authority and power to the elected members including the MP. At present, MPs are Chairperson of Business Monitoring Committee. An MP has no role in drawing up plans or taking decisions, so how is the MP expected to monitor the process? Therefore, all tribal welfare related schemes should be implemented under the chairmanship of the MP.
- There is no power or authority to the elected representative with respect to drafting of plans and decision making. Thus, there is limited scope for the elected representatives in improving the local situation.
- Under the Forest Rights Act (FRA), many tribal forest dwellers have been given the pattas. Moving a step ahead, all the Patta holders under FRA are covered under below poverty line and they are considered eligible for the benefit of Indira Awas Yojna.
- The State makes effort to create awareness about the PESA. However, on the ground the provisions of the Act hardly seem to be implemented.

CHAPTER FIVE

SYNTHESIS OF INFORMATION OBTAINED THROUGH DISCUSSIONS WITH PARLIAMENTARIANS

The details mentioned in the previous chapter are based on the discussions with the tribal Parliamentarians from the States of Madhya Pradesh, Maharashtra, Chhattisgarh and Odisha. In the following paragraphs, the researcher has tried to analyze Parliamentarians' responses state-wise. This analysis will help in assessing in which State the tribal Parliamentarians have been effective as regards the implementation of the PESA.

Data of tribal Parliamentarians' understanding of and contribution to tribal issues and PESA

PESA concern	Chhattisgarh	Maharashtra	Madhya Pradesh	Odisha
1. Understanding of tribals' problems in Scheduled Areas	4	3	5	2
2. Understanding of the PESA provisions	2	2	2	1
3. Strengthening people's power in Fifth Scheduled Areas	1	1	2	1
4. Participation in state/central councils and forums for tribals	2	1	4	1
5. Initiative to conserve tribal tradition and culture	-----	-----	-----	-----
6. Effective suggestion for PESA	1	1	1	1

Analysis

The above table attempts to analyze the state-wise contribution of tribal Members of Parliament with respect to the PESA. However, the figures quoted in the table do not match with the total number of Parliamentarians interviewed, as with respect to certain concerns mentioned in the table, no response or answer was received from some of the MPs.

Understanding of tribal issues in Fifth Scheduled Area

Madhya Pradesh has the maximum number of tribal MPs out of the four states selected for the study followed by Chhattisgarh, Odisha and Maharashtra. The table shows that in Madhya Pradesh, five MPs had a good understanding of tribal issues of their constituency. The same is observed in other States also. All the MPs were born and brought up in remote tribal villages, with no or poor educational facility; they have experienced the difficult tribal life in Fifth Scheduled area. Therefore, most of them were aware of the problems, concerns and needs of the tribal people of their

constituencies. However, in Chhattisgarh, two MPs did not comment in detail on the above issues, as they were alienated from their original place in early childhood.

Poor educational infrastructure, lack of healthcare facility, no employment avenues, low connectivity with urban areas, prevalence of blind faith and growing Naxal activities were the major problems highlighted by all the tribal MPs. The impact of these problems reflected on their educational background and the hurdles they faced in political career.

Understanding of the PESA provisions

The present study is based on understanding the role of tribal Parliamentarians in strengthening PESA, and therefore, knowing the responses and suggestions from them about the PESA was the core of the present study. However, the responses of all the Parliamentarians in these four States were similar, as their understanding about the PESA seemed limited. Though they were aware about PESA, they never made use of the provisions of the PESA for the development of their constituencies.

Those Parliamentarians serving their first term in the Lok Sabha were not aware of the PESA and could not comment about its implementation or provide suggestions with regard to the PESA. Of the four States selected for the present study, Madhya Pradesh has the largest number of tribal Parliamentarians in past and present. Only Shri Gajendra Singh Rajukhedhi (*Dhar Lok Sabha constituency, Madhya Pradesh*), who is serving his third term in the Lok Sabha, could comment authoritatively on PESA, while others had limited knowledge. Same was the case in Maharashtra and Chhattisgarh, where only the experienced Parliamentarians provided comments and suggestions about PESA.

It is also interesting to note here that most of these MPs started their political career from the Panchayati Raj Institutions (PRIs), where they worked under the PESA provisions, but they had no example or case to quote where the Gram Sabha proved its might by using the PESA. This shows that the PESA has not reached the members of PRIs. Had they been aware of the PESA provisions during their stint as members of PRIs, they could have strengthened it as a Member of Parliament.

The State Resource Centers in Madhya Pradesh, Maharashtra and Chhattisgarh have plans and resource material to conduct training on the PESA for PRI members from the Scheduled areas. However, in practice, very limited trainings were held. It is also important to note that these training should be conducted on regular basis, as the PRI members keep changing every five years.

Strengthening People's power in Fifth Scheduled Areas

The researcher spoke to these Parliamentarians about their efforts to strengthen people's power in their constituency.

Though there was no specific response in this regard, the researcher has tried to put their responses in a perspective state-wise:

States	Activities
Madhya Pradesh	<ul style="list-style-type: none"> • Strengthened women's collective initiative for closure of liquor shops (Dhar) • Encouraged tribal art and culture (Dhar) • Special coaching for tribal youths • Dialogue with youths on curbing naxal activities (Dhar)

	<ul style="list-style-type: none"> • Better facilities at Ashramshalas and hostel for tribal students (Betul, Khargon) • Voicing concerns of tribals on different political forums (Betul, Chhidwara)
Maharashtra	<ul style="list-style-type: none"> • Special provisions like admission facilities for education of tribal youths (Gadchiroli, Palghar) • Attention to cases of illegal mining and land acquisition in Scheduled Areas • Developing leadership among tribal youth (Palghar) • Strengthening tribal regional parties and fronts (Palghar)
Chhattisgarh	<ul style="list-style-type: none"> • Library and coaching classes for tribal youths (Kanker) • Engineering and medical college (Surguja) • Setting up of industries (Kanker, Bastar and Surguja)
Odisha	<ul style="list-style-type: none"> • Representation of tribal leaders in economic forums (Koraput) • Employment generation(Koraput)

Participation in state and central councils and forums for tribal

As mentioned in PESA, the Tribes Advisory Council (TAC) in the state will be responsible for the tribal welfare in Scheduled areas. Accordingly, the states form TACs and the tribal MPs were part of these councils.

As member of TAC, the work of MPs could not be documented as they did not share much on this issue. MPs including Shri Gajendra Singh Rajukhedi, Smt Jyoti Dhurve, Miss Anusuiya Uikey, Shri Nand Kumar Sai, Shri Sohan Potai were also leaders of the tribal fronts of their political outfits. Smt Dhurve headed the women's wing of BJP tribal front for some years.

Almost all the MPs interviewed had, more or less, a common view to express that — *being a tribal leader, there is limited opportunity for them in mainstream party activities; they are mostly confined to the responsibility of their party's tribal wing.* However, even this opportunity was not used to discuss laws and provisions for the welfare of tribals, including the PESA. For the problems raised by the MPs with regard to land acquisition, illegal mining, lack of educational and employment opportunities in the Fifth Scheduled Areas, the PESA is the answer. However it is not referred/used. As tribal leaders, the MPs felt the need to come together cutting across party lines. However, in practice, there are rarely any such instances.

Initiatives to preserve tribal culture and traditions

PESA is enacted to conserve tribal tradition and culture and at the same time, it aims at conserving the local natural resources. Tribal MPs are the leaders of uppermost tier of Indian democracy and can directly participate in the process of law-making and enactment. The tribal population looks up to their leaders for preserving and encouraging tribal culture and traditions, and also for propagating such practices among non-tribal community.

Contrary to this, the tribal leaders seem to have shown little interest in this regard. Many tribal leaders have not even been able to speak their mother tongue (tribal dialect). Many tribal leaders belong to Primitive Tribal Groups (PTGs).

Smt. Jyoti Dhurve (MP from Betul Lok Sabha constituency, Madhya Pradesh) and Shri Gajendra Singh Rajukhedi (MP from Dhar Lok Sabha constituency, Madhya Pradesh) were the only two MPs interviewed by the researcher who have taken concrete efforts to preserve the tribal culture, heritage and practices. Most of the MPs spoke about the diverse practices of tribal community which also benefit non-tribals. For example, tribal culture gives importance and respect to women and there is no dowry system in their culture. Similarly, in the tribal culture nature is worshipped in some form or the other.

Suggestions for PESA

It is mentioned in the report that most of the MPs started their political career from the Panchayats where the PESA is implemented, and therefore it was expected of such leaders to provide concrete suggestions for effective implementation of the PESA. The MPs mostly discussed development related work and problems of their constituency.

The development related works were of different nature and ranged from establishing an industry, mining-based economic activity, laying of a railway line, setting up of schools, hostels, colleges, hospitals, etc. However, the rights of the tribal population of Fifth Scheduled areas were not discussed. Very few MPs were able to provide effective suggestions for PESA, which are enlisted under key findings.

CHAPTER SIX

ISSUES CONCERNING EFFECTIVE IMPLEMENTATION OF PESA

Following issues emerged regarding effective implementation of the provisions of the PESA based on discussions with the tribal Members of Parliament:

- **Non-Compliance and violation of the provisions under PESA by States and inclusion of tribal habitations that are left out under the Fifth Schedule**

About 70% of the Scheduled Tribes fall outside the purview of Scheduled areas (Fifth and Sixth Schedule), and hence are denied the rights as provided in Article 244 for no mistake of theirs except political and administrative apathy and neglect. Various committees had recommended that those habitations that have been inadvertently left out should be included and the anomaly be rectified forthwith.

- **Upgradation of Panchayats to municipalities in Fifth Scheduled areas when the law to govern municipal/urban areas of Fifth Schedule is yet to be enacted and the resultant Constitutional vacuum and/or illegal extension of ordinary municipal laws to the said area**

Numerous Panchayat areas in the Scheduled areas are being upgraded/converted as municipal/urban areas and therefore, it was argued that the PESA was no longer applicable to these areas. This has happened in Chhattisgarh, Madhya Pradesh and Maharashtra, which resulted in cases being filed in the courts. The Chhattisgarh High Court declined to stay the elections to the newly-formed urban Panchayats. The Jabalpur High Court stayed elections to 52 District Panchayats and Municipalities having Scheduled areas. In September 2009, the Court observed that the Panchayati Raj Act did not apply to Scheduled areas and said Parliament should enact a suitable law extending the 74th Constitutional Amendment Act to urban areas in the Fifth Scheduled areas. Similar situation exists in Maharashtra. As a result, more the PESA areas may be upgraded taking these off the PESA purview. These will exist in a constitutional vacuum and illegally under the purview of the general municipal laws. It may be mentioned that the Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001 was introduced in Parliament in July, 2001.

- **Weak Gram Sabha and poor attendance in Gram Sabha reduces tribal people's role to a mere formality**

In most cases, the Gram Sabha's consent is taken on paper, but in reality, the Gram Sabha is not aware of granting such a consent. The role and responsibilities of Gram Sabha in the state Panchayat Acts, as in PESA, are similar in many ways. It is unfortunate that the Gram Sabhas are not strong enough to use their authority either under Panchayat Raj or under the PESA. Many tribals living in Fifth Scheduled areas do not figure in the voters' list for many reasons, and thus, technically they can not become members of Gram Sabha. This also causes limitation for an effective and empowered Gram Sabha.

- **Planning and management of water bodies under the PESA**
In case of water bodies in Fifth Scheduled areas for minor irrigation purposes, the Gram Sabha has the right to discuss and decide the irrigation plan. However, in reality, the water bodies are either under the forest or revenue department and thus, decisions remain pending due to confusion of jurisdiction.
- **Interference by non-tribals in the leadership of tribal leaders**
Non-tribals too live in Fifth Scheduled areas and though their numbers are small, they are influential and financially better-off. These non-tribal people often influence the decisions and functioning of the tribal leaders of the Fifth Scheduled areas. This situation can be countered only with a strong tribal leadership who is aware of his rights and responsibilities.
- **Mining lease for extraction of minor minerals**
Under PESA, the Gram Sabha is empowered to decide the mining lease to the private contractors in case of extraction of minor minerals. It is feared that private contractors may seek Gram Sabha's consent by offering money or such unscrupulous ways. There is no mention of qualifying criteria for the contractor who can extract minor minerals from the Fifth Scheduled areas. Besides, the PESA does not comment on the extraction of major minerals, while it is well-known that it harms the environment and creates adverse impact on the region's natural habitat.
- **Employing tribal people in NGOs working for tribal in Fifth Scheduled Areas**
In case of employing tribal people from the Fifth Scheduled areas by NGOs working in this region, no amendment has been made in the Societies Registration Acts of the States. Thus, it is not binding for the NGOs to employ tribal people.
- **Non-compliance of state laws related to sale of liquor in Fifth Scheduled Areas**
PESA empowers the Gram Sabha to ban production and sale of liquor in the Fifth Scheduled areas. This provision allows prohibition of liquor production and selling units setup after 1996. Therefore, other such units set up before 1996 operate freely.
- **Role of Gram Sabha with respect to social justice**
Though the Gram Sabha under the PESA are legally empowered to decide a case of social offence, there is no such parallel amendment either in the Indian Penal Code or in the Criminal Procedure Code.

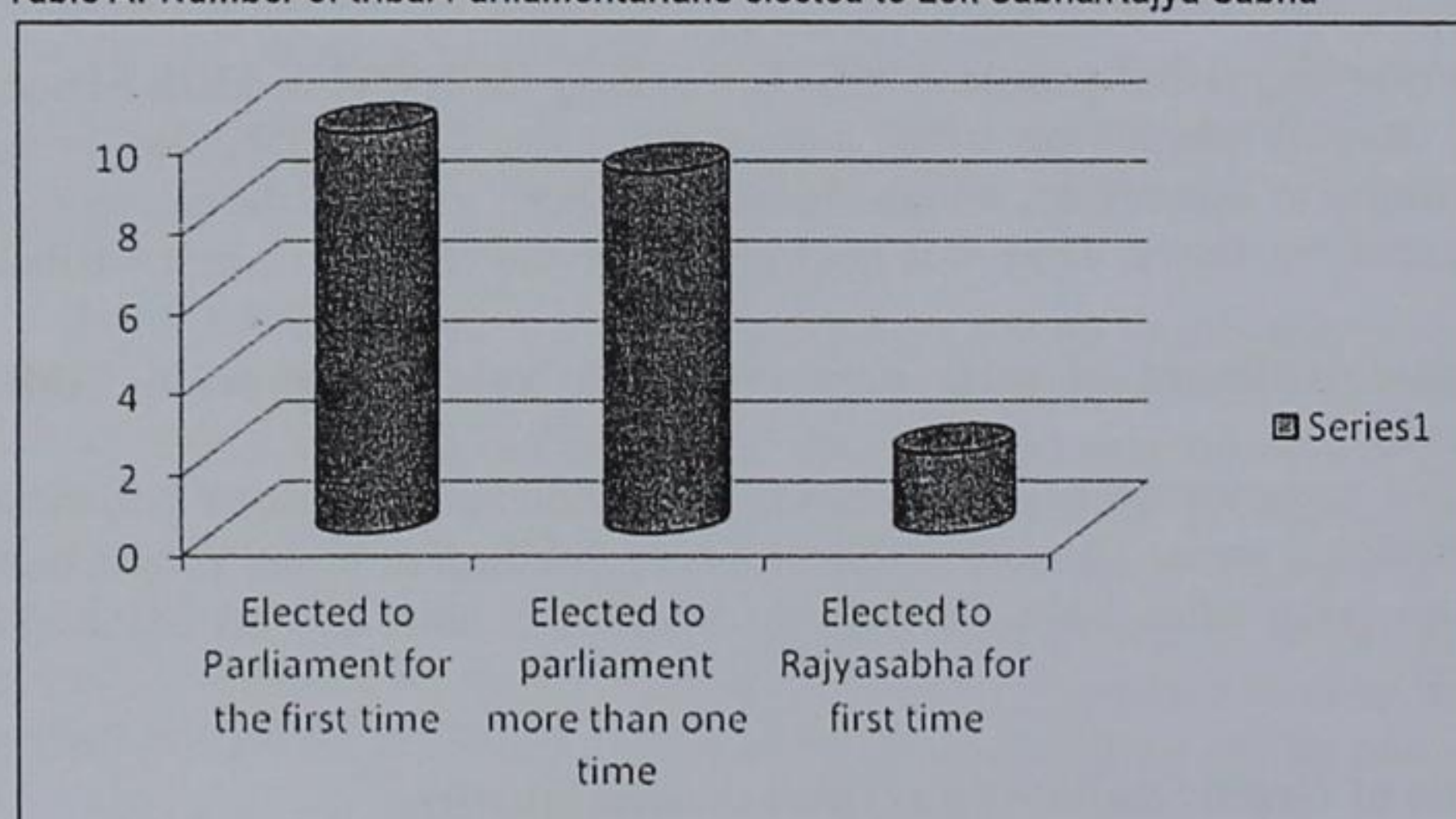
CHAPTER SEVEN

KEY FINDINGS

There are 21 tribal members in the **Lok Sabha and Rajya Sabha**. There is more representation of tribal leaders in **Lok Sabha** as there are 19 tribal MPs in **Lok Sabha** elected from the Fifth Scheduled areas from the four States. Two tribal Parliamentarians — one each from Chhattisgarh and Madhya Pradesh — are members of the **Rajya Sabha**.

The tribal Parliamentarians who were interviewed for the purpose of this study had not adequate knowledge about the PESA and thus they could comment only on specific issues with regard to implementation of the PESA. The tribal Parliamentarians from the Fifth Scheduled areas also expressed the view that there is less awareness about the PESA among the tribal people in Fifth Scheduled areas. **Therefore, each State should make efforts to make people aware of the PESA and that the implementation of the PESA provisions should be made compulsory for the States.**

Table A: Number of tribal Parliamentarians elected to Lok Sabha/Rajya Sabha



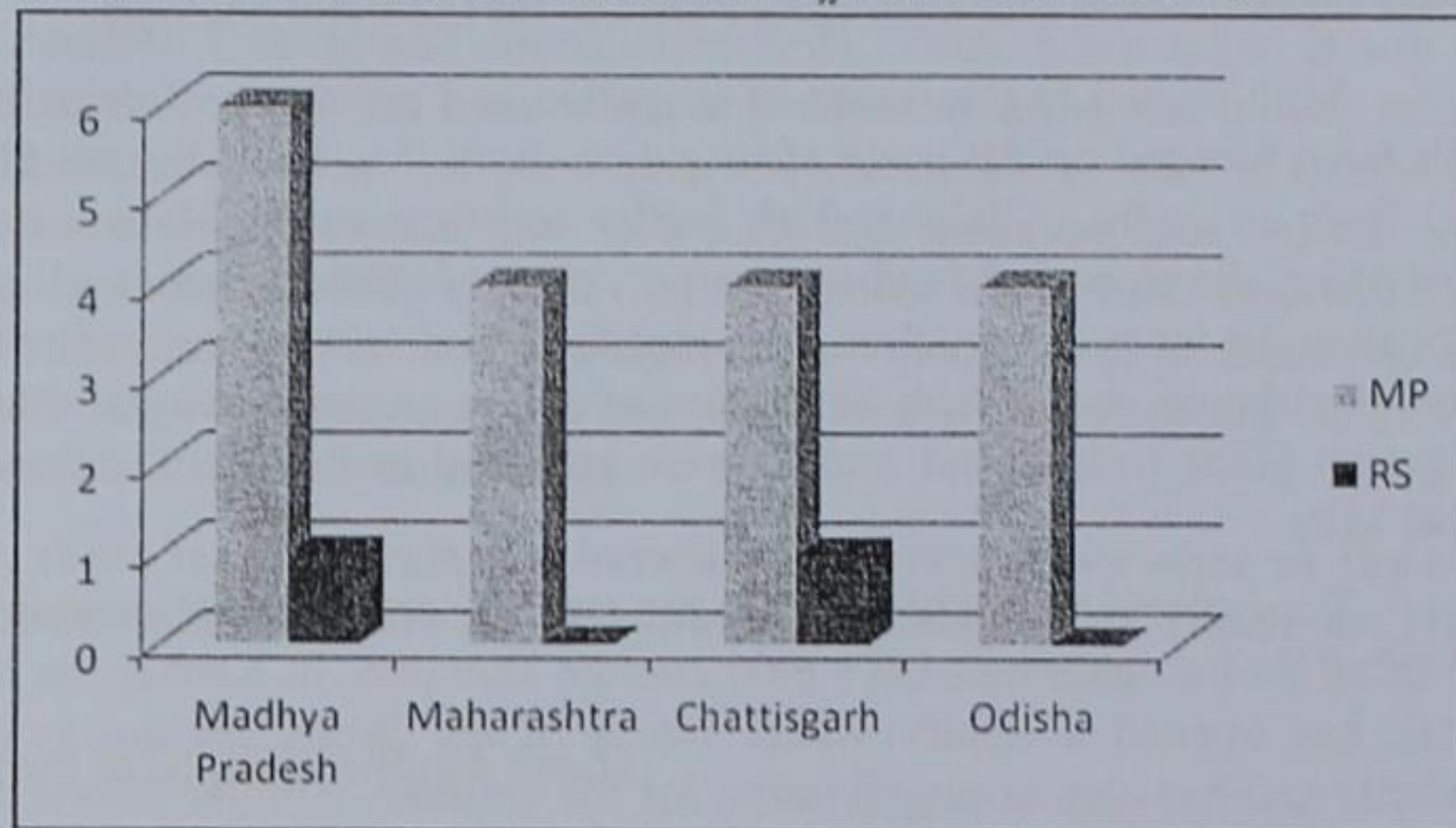
The Parliamentarians also said that they do not get enough opportunities to speak about their issues both in the Parliament and within their party. Most of the questions raised by the Parliamentarians were restricted to implementation of various schemes for the welfare of tribal community in general but they did not raise any specific questions or issues about implementation of the PESA.

The PESA provides a very strong articulation of development of the tribal population and also of the Fifth Scheduled areas. Therefore, if the PESA is effectively and appropriately implemented in the States, then the issues related to non-implementation of various development schemes by rural development ministry or tribal development ministry will not arise.

Each of the four States selected for the purpose of this study face burning issues of land acquisition, growing naxalism and poverty. In the backdrop of these

issues, it is very important that the tribal people living in the Fifth Scheduled areas are sufficiently empowered to determine the development plans of their Panchayats.

Table B: Number of Tribal Parliamentarians in Lok Sabha / Rajya Sabha in the four states

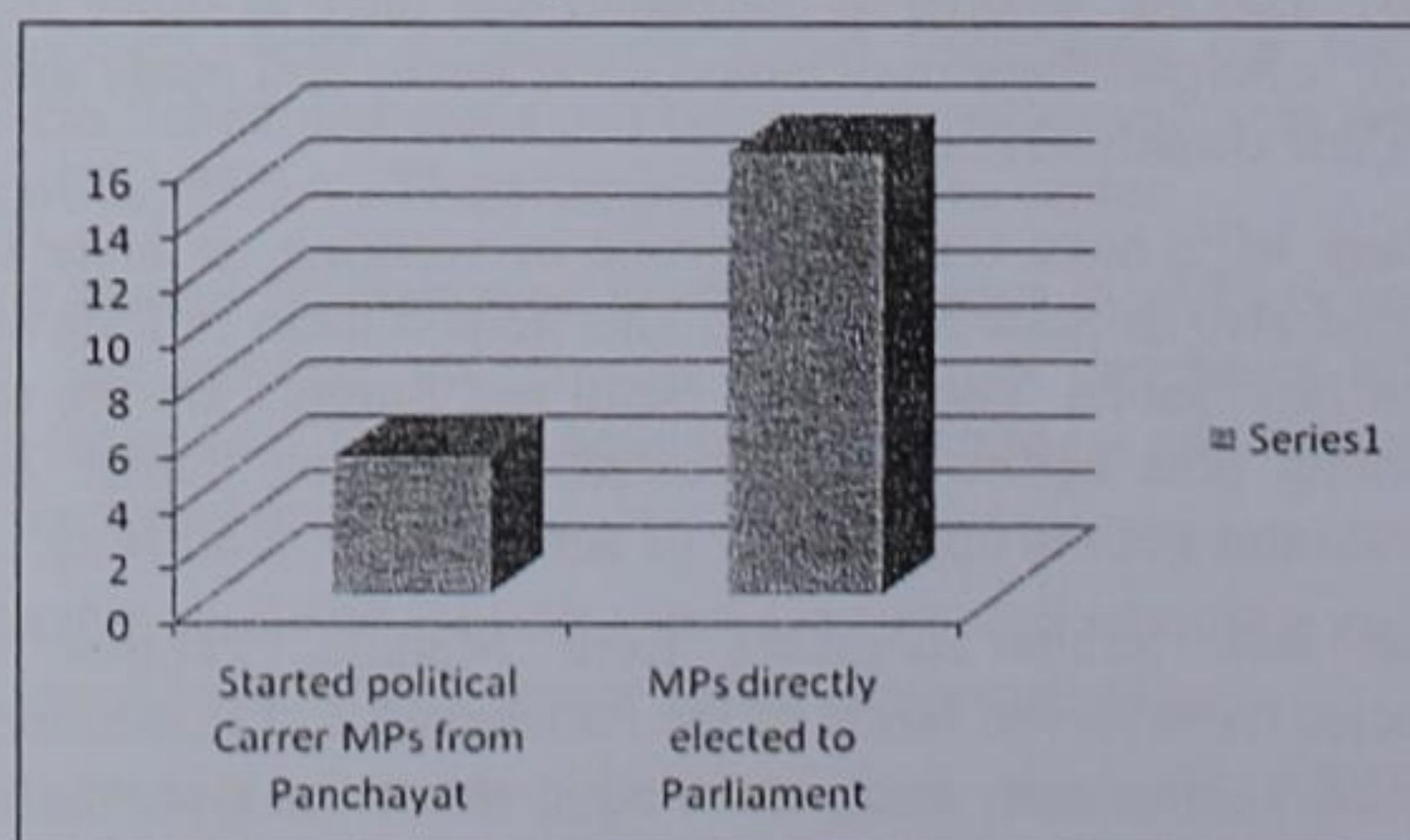


With regard to the development of their constituency, the Members of Parliament shared the following information:

There is a greater need for development work with respect to infrastructure and means of communications in the Fifth Scheduled areas. Road connectivity of remote villages was in the list of completed works of all tribal MPs of the Fifth Scheduled areas. Though road connectivity has improved over the last decade, in districts like Gadchiroli, Kanker and Surguja, there are still a number of villages and hamlets which are yet to be connected by road.

Better road connectivity has helped tribals access health, education and market facilities in nearby areas. Laying of railway lines remained the top agenda of many tribal Parliamentarians for improving connectivity and easy transportation of material from this region. However, it took very long for them to persuade the Ministry of Railways to sanction a railway line in their constituency. Many Parliamentarians attributed absence of railway lines for the slow development of the tribal areas, as no big industry was willing to set up units. It is also important to note here that only those Parliamentarians having prior experience could follow up the matter of railway lines.

Table C: Tribal MPs with Panchayat background or elected straight to Parliament



Improved rail and road links in the Fifth Scheduled areas means making health, education, market, etc. accessible to the tribal population. The instances from Dhar, Palghar, Kanker and Raigarh Lok Sabha constituencies showed that improved access offered better scope for career growth for the tribal students.

With regard to the issues of irrigation and provision of drinking water, many MPs have focused on the issue of irrigation more than that of drinking water. Except Shri Baliram Jadhav (Palghar Lok Sabha constituency in Maharashtra), who spent most of his development fund for the provision of drinking water, all other MPs gave priority to the issue of irrigation. The reason behind this was agriculture as most of the tribal population in the Fifth Scheduled areas are engaged in agriculture. Sanctioning irrigation plans (minor and major) were reflected in the list of achievements of the tribal MPs.

Education and healthcare are the two important social components on which the tribal Parliamentarians have paid enough attention. In Kanker, its MP, Shri Sohan Potai, has opened a library where books of all disciplines are available to tribal students and has also arranged tutors for the children. Similar efforts are also seen in Dhar constituency of Madhya Pradesh, where tribal students have performed at par with non-tribal students and many of them have now become officers in the Central and State Governments. There are also some tribal students who have become IAS and IPS officers, which is a matter of great pride for the local people.

The MPs from Betul, Raigarh, Surguja constituencies have paid special attention to the issue of providing hostels for the tribal children in their constituencies and their attention has improved the availability of the hostels as they also got more hostels sanctioned in their constituencies. Medical colleges, engineering colleges, Industrial Training Institutes (ITIs), etc. were also on the list of demands of the people from these tribal areas. At places like Betul, Surguja and Mandla, some such colleges were approved. In Gadchiroli and Mandla Lok Sabha constituencies, universities were established, and the credit for setting up of these universities goes to the MPs who followed up the matter. The Universities at Amarkantak in Mandla and Gondwana University in Gadchiroli constituencies are examples of universities in predominantly tribal areas.

The political connect and leadership of the tribal Members of Parliament

The MPs who are well acquainted with the local environment and local issues, their connectivity with people was strong. Except Raigarh Lok Sabha constituency, MPs from other constituencies mentioned in this study do not have any political leaders in their family. Having worked as Sarpanch and later in other tiers of Panchayati Raj Institutions, it helped them understand local issues and made them popular among the people of their constituencies.

Many MPs have long experience of working as State Legislative Assembly members and also as State Ministers. This helped them in following up tribal issues at the level of Lok Sabha. The MPs of Betul and Surguja are the ones who did not hold any leadership post before being elected to the Lok Sabha. Both worked as party workers and later got the opportunity of successfully contesting Lok Sabha elections.

The Lok Sabha members from Mandla, Palghar, Dhar and Khargon constituencies have served terms in the Panchayati Raj Institutions which directly deal with the PESA. However, their knowledge about the Act was very limited. None of these MPs ever raised an issue regarding implementation of the PESA in Parliament.

While they were the members of the Panchayati Raj Institutions, and the PESA was in place, even in those times these MPs did not do much to implement the PESA.

As is mentioned in the PESA, the Gram Sabha in the Fifth Scheduled areas is the supreme decision making and consultative body. Thus, when asked if any Gram Sabha in their constituency has ever taken any decision using the power vested in them under PESA, they could not put forward any example of such a Gram Sabha. However, in some constituencies, the MPs said that there are some Gram Sabhas where women have successfully moved motion against liquor sale. Important issues such as land alienation and acquisition, rights over minor forest produce and minor minerals, small irrigation projects, etc are not discussed as there are no powerful Gram Sabhas in the Fifth Scheduled areas.

Thus, there is no correlation between the prior experience of the sitting MPs with their earlier tenure as Sarpanch or member of Block or District Panchayat.

Questions raised in Lok Sabha/Rajya Sabha

When a member is elected to the highest decision making body of the democracy, the people of the constituency expect a lot from their elected representative. Parliament sessions provide opportunities to Members to raise questions regarding crucial issues of their constituencies. From the records of **Lok Sabha and Rajya Sabha** sessions and from the discussions held with the Members of Parliament, following are the main issues on which questions were raised or information was sought in Parliament:

- Railway lines
- Medical and engineering colleges
- Alternative arrangements for tribal students for e-applications for professional courses
- Irrigation facilities
- Implementation of tribal welfare schemes
- Displacement of tribal people in various parts of the country
- Land alienation issues

Suggestions given by tribal Parliamentarians about the PESA implementation

Many tribal Members of Parliament were not aware of the provisions of the PESA. Therefore, they could not provide concrete suggestions with respect to its implementation. However, their suggestions about improving the status of tribal community in the Fifth Scheduled areas can be considered as valuable with respect to the implementation of the PESA. Their suggestions are as under:

1. PESA provisions should be displayed at various places in Fifth Scheduled areas. For this, boards, flex banners, etc. should be put up at Panchayat offices, public places and along the roads. This will help spread awareness and information about this Act among the tribal community.
2. Improving leadership qualities among tribal women and ensuring greater role for women in joint forest committees, minor forest cooperatives, etc.
3. Encouraging tribal women to participate in Gram Sabha and pass resolution banning liquor in the village.

4. The state government, with the help of the State Institute of Rural Development (SIRD), should plan training for the elected representatives of Panchayati Raj Institutions and also for the members of Gram Sabhas about the PESA and their rights under PESA.
5. Primitive Tribal Groups (PTGs) are the extinct groups of tribal population and there are more such groups which are still not identified as PTGs. Thus, urgent efforts are needed to include tribes as PTGs. As the PESA aims to preserve tribal culture, the States should make provisions to give special attention to PTGs at the state level.
6. Both the Forest Rights Act, 2006 and Bio-diversity Act are closely linked with tribal lives. Thus, there is need to see that there is congruence in these Acts and the PESA provisions. Gram Sabhas are the most powerful decision making body under the PESA and should be given appropriate role in the implementation of these two Acts.
7. Traditional tribal craft, languages, culture and traditions should be conserved and Gram Sabhas should be involved in identifying and conserving them.
8. There should be Special Agriculture Zones in place of Special Economic Zones. The fast depletion of natural resources should be tackled through the provisions of PESA.
9. Leadership should be promoted among the tribal youths. Similarly, tribal leaders should also be aware that they are tribal representatives and thus protecting the tribal rights and conserving tribal culture should be their priority.
10. No attention is given to the irrigation facilities in forest areas, mostly in Scheduled areas. In the absence of irrigation, the local tribal are not able to conserve forests. Thus, like irrigation facilities for agriculture are considered a priority, irrigation facilities for forestland should also be given priority.
11. The States having Fifth Scheduled areas face challenges in defining some important terms like 'village', 'Gram Sabha', 'minor water bodies' etc. While defining these terminologies for PESA, the states have to follow the definitions already adopted by the State in other Acts. If a change is made to these definitions in PESA, then a similar change will need to be incorporated in other Acts as well. Absence of a uniform definition creates confusion leading to procedural delays.
12. The Adivasi Salahkar Parishad (Tribal Advisory Committee) to be formed by the State is only on paper and the members of these committees are not aware of their role. The meetings of these committees, if formed, are also not held regularly. The State Governor is assigned to prepare status report of tribals living in Scheduled Areas, and their report can bring the desired progress in the implementation of the PESA. With respect to these two provisions, strict adherence is needed by all the nine States having Fifth Scheduled areas.
13. The funds for tribal development should go the directly to district and block Panchayats and the role of elected representative in these two tiers of Panchayats should be clearly defined to use these funds.
14. Elected tribal representatives of the area should be entrusted with the supervision and care of the hostel for tribal children.

15. Special provision should be made to bring the tribal people in the mainstream and the upper limit of issuing loan to a tribal should be raised.
16. It should be ensured and supervised that the banks do not hesitate in sanctioning large loans to tribal people.
17. The tribal quota backlog should be filled as early as possible.
18. With respect to urban areas in the Fifth Schedule, there is no law to govern the urban bodies. It was argued by some MPs that on the lines of PESA, there is a need for a separate Act which will govern the urban areas under the Fifth Schedule. Some MPs said there should be no distinction between rural and urban areas in the Fifth Schedule and the whole Fifth Scheduled areas should be considered as a homogeneous area.
19. The Centre's policy for the Scheduled Castes and Scheduled Tribes should follow the the PESA provisions.
20. The joint forest committees formed after passage of the Forest Rights Act are defunct as they are not able to safeguard the forest land of tribal people. Therefore, measures need to be taken to oversee the functioning of these committees.
21. The high percentage of land deals in the Fifth Scheduled areas should be brought under legal scrutiny. The large-scale tribal land deals are highly influenced by the industrial lobby which intends to acquire land for commercial use.
22. The term "consultative role of Gram Sabhas" with respect to various matters should be amended as many Gram Sabhas are not aware of their role making it easier to get their sanction on paper by using money and muscle power.

CHAPTER EIGHT

SPECIAL PROVISIONS FOR FIFTH SCHEDULED AREAS

Article 244(1) of the Constitution of India provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

8.1 Provisions under Fifth Schedule

The following are details of the provision as mentioned in the Fifth Schedule:

- Assam, Mizoram, Meghalaya and Tripura are not part of the Fifth Schedule
- The State administration will have extension of its administrative authority over the Scheduled Areas.
- The State Governor presents a report to the President with regard to the administration of the Scheduled Areas. This report needs to be presented to the President by the State Governor as and when demanded.
- The Tribes Advisory Council will be formed in each State having the Scheduled Areas. This Council will have not more than 20 members of whom at least three-fourths members will be elected tribal representatives of State Legislative Assembly.
- The State Governor will appoint Tribes Advisory Council members and decide about the number of members. The Governor will also convene meetings of this Council.
- This Council will advise on the matters relating to the welfare and development of Scheduled Tribes as directed by the State Governor.
- The State Governor can issue an Ordinance that any Act passed by the State legislature or Parliament will not apply to the Scheduled Area, considering the sovereign nature of the Scheduled Area.
- The Scheduled Area is defined as any area declared as Scheduled Area by the President.
- The President may issue an Ordinance declaring exclusion of certain geographical area from the Scheduled Area.
- The Scheduled Area in any State may be increased after consulting the State Governor and the geographical limits of the Scheduled Areas can be changed after *parishodhan* (amortizing)
- If there is any change in the geographical limits of any State or any new State is formed, the area which was not part of any State earlier may be declared as Scheduled Area or part of Scheduled Areas.
- Any change in the geographical limits of Scheduled Areas, the State Governor will have final authority to decide.

8.2 Success stories from Fifth Scheduled Area

Power of the Gram Sabhas

As mentioned earlier, the Gram Sabhas (village councils) are the supreme authority in the Fifth Scheduled areas. Here are some examples of Gram Sabhas which have used their powers as provided in the PESA.

Gram Sabha in Kalahandi and Rayagada districts of Odisha will decide whether the industrial activities of Vedanta (a business group) violate the constitutional rights of the tribal communities to worship. This is an order passed by the Supreme Court in Vedanta case, and the order means that the voters of these villages will decide the fate of multi-crore rupee project based on their religious beliefs. Though parroted often that religious belief is a private concern, the Apex Court's order is exceptional in making religious decision a community one. Those who understand tribal ways of life will vote for this order.

The case of Vedanta is a perfect case where the Government's power to acquire land for public purpose and having right over minerals are in direct conflict with religious rights of the tribal communities. Unlike many religions, tribal religion is manifested in tangible living forms like forest, land and water. Tribal beliefs are pure functional codes for maintaining the fragile ecology-economy equation that sustain them. This is where the Court's order to assign the village council, which enjoys constitutional power to take a call on religious rights, comes as an acknowledgement of this fact that the standard law and religious approach to tribal areas will not work. Village councils are now the institutions that Government are targeting for effective service delivery. They are fast emerging as tools to turn the representative local government into participatory one. There are many ways to interpret Court orders, but the current order has immense ramification for this institution and it may open up a new front for direct intervention by voters in contentious issues. In tribal areas, it is a judicial order to get back to their age-old participatory and commune system of governance.

There are many cases where village council meetings are engineered to get favorable decisions. Applying all possible tricks, projects that have adverse local impact including Vedanta have got approved through dubious consent. Studies carried out across country show that people hardly attend Gram Sabhas. The Court's interpretation of tribal right to worship and to decide on it in a general village meeting applies equally to all tribal areas — the preferred hotspots of industrial and mineral development. The court while upholding the Government's right over the country's 85 billion tonnes of mineral resources, also upheld the right of tribal communities over gods and goddesses that tribals believe reside over the resources.

(Source: Down to Earth, May 16-31, 2013)

CHAPTER NINE

THE ROADMAP FOR PANCHAYATI RAJ 2011-16

The All India Roadmap for Panchayati Raj published by the Ministry of Panchayati Raj has mentioned the following details about PESA:

PESA for people centric governance

Provisions under Fifth Scheduled of the Constitution: The Fifth Scheduled areas of the nine States (Andhra Pradesh, Jharkhand, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan) are characterized by poverty, illiteracy, weak infrastructure and deprivation in general. Given the vulnerability of the people, Fifth Scheduled of the Constitution makes special provision as:

- a) Report by the Governor to the President regarding the administration of these areas.
- b) Tribes Advisory Council to advise Governor on matters pertaining to the welfare and advancement of the Scheduled Tribes.
- c) Direction by Governor through public notification that any particular Act of Parliament or State Legislature shall not apply to a Scheduled areas or any part thereof
- d) Governor to make regulation for peace and good governance.
- e) Union Government to direct the State as to the administration of these areas.

Need for the PESA in spite of Fifth Scheduled: Special provisions notwithstanding, the pressure on natural resources in these areas continues due to large projects being set up and unscrupulous elements indulging in illegal mining and plundering forest wealth. The continuous land alienation and exploitation led to dislocation of communities and loss of major sources of livelihood and increased vulnerability & disenchantment with governance.

It was critical that customs, rights, livelihoods of these people are protected through their empowerment. Accordingly, the PESA was enacted in 1996 which extended the provisions of Part IX of the Constitution relating to Panchayats to Fifth Scheduled Areas, and provided for people-centric governance and people's control over common community resources and their life, with a central role to the Gram Sabha.

Powers of the Gram Sabhas: The Gram Sabhas under the PESA are deemed to be competent to safeguard and preserve the traditions of their people, community resources and customary mode of dispute resolution. The Gram Sabhas have:

- a) Mandatory executive functions to approve plans of the village Panchayats, identify beneficiaries of schemes, issue certificates of utilization of funds, etc.
- b) Right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation and prospecting licenses/ mining leases for minor minerals.
- c) Power to prevent alienation of land and restore alienated land
- d) Power to regulate and restrict sale/consumption of liquor
- e) Power to manage village markets, control money lending to the Scheduled Tribes
- f) Ownership of minor forest produce
- g) Power to control institutions and functionaries in all social sectors
- h) Power to control local plans & resources for such plans including tribal sub-plan etc.

Role of the PESA in containing extremism: It was expected that the PESA would lead to self-governance and empowerment of the people. However, implementation of the Act has not been satisfactory. The rights, livelihood and habitat of the people in these areas have continued to be under stress leading to their dissatisfaction with the system. Generally the PESA areas and those in their vicinity suffer from extremism. Effective implementation of the PESA is the answer to various causes of discontent leading to extremism in the tribal areas. Not surprisingly, various expert committees have recommended implementation of the PESA in letter and spirit. There is an evident urgency in the PESA implementation in view of the rising extremism in these areas and vicinity.

Effective functioning of Gram Sabhas

- Empower the Gram Sabha as above and ensure its effective functioning
- Undertake special programmes to acquaint the Gram Sabha of their rights and duties
- Develop appropriate training and informative material in the regional language
- Identify, train and socially mobilize people for activating the Gram Sabha
- Conduct regular training programmes on the PESA for State and Panchayat functionaries
- Sensitize and educate them on the PESA with focus on role and conduct of Gram Sabha

Action Points: Key interventions by the state:

A) Acts and rules

- i) Adopt model the PESA rules in appropriate modification

- ii) Amend PR act for consonance with PESA
- iii) Amend subject laws, rules and executive instructions

B) Gram Sabha

- i) Empower Gram Sabhas and ensure effective functioning (MoPR guidelines)
- ii) Provide administrative support to Gram sabhas for exercising its functions
- iii) Provide professional and technical support to the planning entities, including Constitution of professional DPUs and use of technical support institutions
- iv) Appropriate training and capacity building of PRI members and functionaries
- v) Expedite use of Plan Plus Software

e-Governance

1. **Issue:** Operationalising e-Panchayats in a Mission Mode
2. **Action points:** Provide ICT infrastructure and manpower to all Gram Panchayats (GoIs and States), have a clear strategy and roll out plan for e-Panchayat project for which INSA, BPR and DPR have been prepared for each State and UT, develop and deploy Core Common Applications in a year and State specific applications, from e-Panchayats Society for pooling resources and flexible procedures.

Inadequate implementation of PESA

Action Points

1. Amend the PESA Act to remove ambiguities
2. Frame the PESA rules or adopt model rules framed by MoPR
3. Amend relevant subjects laws and issue executive instructions
4. Enable and activate Gram Sabhas
5. Build capacity of functionaries implementing the PESA

Issues raised during a meeting convened by Secretary, Ministry Of Panchayati Raj, Shri A. N. P. Sinha, with the PESA states and state Tribal Research Institutes (TRIs) on implementation of the PESA on September 9, 2009 at New Delhi:

Definition of village in the Scheduled Areas: Commissioner TRI, Maharashtra, pointed out that the definition of area of village is problematic. He cited the example of the implementation of Forest Rights Act where the area which contains community forest resources is not bound by the legal boundaries of the village. Secretary, Panchayat i Raj, Maharashtra, stated that the implementation of CSSs like Indira Awas Yojna and selection of beneficiaries occurs within the structure of the revenue village.

Director, Panchayat i Raj, Jharkhand, stated that in the non-Scheduled areas in Jharkhand, the Gram is the same as revenue village, whereas the definition of village in the Scheduled areas is in keeping with the one given in the PESA.

Director TRI, Ranchi, stated that there are 3 to 11 Tolas within a revenue village in Jharkhand and the Tolas have to be notified by the Deputy Commissioners for smooth functioning of the Tola Sabhas.

Secretary (MoPR) desired that a circular be issued on the harmonious definition of natural village, *i.e.* as given in the PESA with the administrative unit chosen for development programmes. IG, MoEF observed that the programmes of MoEF are being implemented mainly through natural communities.

ii) **Approval of development plans by Gram Sabhas in terms of section 4(e) of PESA:** The participants stressed that the Gram Sabhas need to be strengthened through technical support to be able to prepare good plans. On capacity building of Gram Sabhas, Secretary, PR Maharashtra stated that a small team of technical personnel would be required in each Gram Panchayat to ensure continuity of the planning process. He gave the example of self-help groups constituted under SGSY Scheme which could play the role of community resource persons.

iii) **Empowerment of Gram Sabhas:** Director, TRI, Shimla, said that the meetings of Gram Sabhas are not being held regularly in Himachal Pradesh. Similarly in Chhattisgarh, Gram Sabhas are not convened in Naxal-affected areas. Gujarat and Maharashtra, on the other hand, have statutory provisions for regular convening of Gram Sabhas. In Maharashtra, for instance, the implementation of Forest Rights Act requires two-third quorum of Gram Sabha. Once it was communicated to the citizens that community ownership rights would be conferred through Forest Rights Act, people were convinced to attend the Gram Sabha.

Secretary (MoPR) observed that while political will for empowerment of Panchayat was important, most often empowerment does not happen because of weak institutions, systems and capacities, which need to be addressed by the administrative machinery.

iv) **Land acquisition:** It is one of the important causes for unrest in the Scheduled Areas. Only Chhattisgarh and Madhya Pradesh have issued executive instructions for Gram Sabhas to be consulted with respect to land acquisition. In Jharkhand, Gram Sabhas are not being consulted. In Andhra Pradesh, Tribal Advisory Council has to be consulted before land acquisition takes place in Scheduled areas. States pointed out that Central Land Acquisition Act has been replicated in the state legislations and since the Central Act does not provide for consultation with Gram Sabha, this aspect is often ignored.

v) **Restoration of alienated land:** In Gujarat, the SDM has the power to restore alienated land. In Jharkhand, the Gram Sabha has no such power. Though the statutory provisions are in place regarding transfer of land from tribals to non-tribals, in actual practice, these provisions are often disregarded and dubious transactions are entered

into which result in alienation of tribal land. Further, when the value of land escalates, the transfer may often lead to litigation to re-claim the ownership of the transferred land.

vi) Planning and management of minor water bodies: The definition of water bodies needs to be finalized and appropriate level of Panchayat should be entrusted with the management of water bodies since the interest of the lower level may not be always be served by a higher level of Panchayat .

vii) Prospecting license and concession for lease for minor minerals: The joint secretary pointed out that many States had provided for consultation with the Gram Sabha.

Report of the sub committee appointed by the Ministry of Panchayat i Raj to draft model guidelines to vest Gram Sabhas with powers as envisaged in PESA

Salient Recommendations

- As a visible token of State's commitment to undo the historical injustice in respect of tribal affairs, the Provisions of Part IXA concerning municipalities should be extended forthwith to the Scheduled Areas with exceptions and modifications as suggested by the Bhuria Committee under article 243ZC(3) of the Constitution.
- The entire tribal sub-plan area including MADA pockets and groups of tribal majority habitations already should be brought under the Fifth Schedule forth with.
- Administrative recognition of the enlarged Scheduled Areas should also be taken up side by side so that all tribal communities can enjoy effective protection under PESA.
- PESA should be suitably incorporated in the official text of the Constitution of India.
- The concerned States should prepare a comprehensive frame of reference for the Gram Sabha in the form of a Gram Sabha Vyavhar Sanhita. The GSVS should be in the language of the people and also their idiom. It should cover all the aspects of governance at the village level as envisaged in the PESA cutting through artificial dividing lines within the formal structure of modern state and making bridges between the formal and the living customs and traditions of the community for which space has been created in the Constitution under PESA.
- The Gram Sabha Vyavahar Sanhita should be incorporated in the State Panchayat Acts by the respective Governors through a notification under para 5(1) of the Fifth Schedule specifying that the provisions of the Gram Sabha Vyavahar Samhita shall serve as guidelines for the Gram Sabha in terms of its competence in section 4(d) of the PESA but they shall be binding on all others including the officials of concerned departments.
- An overriding notification should also be issued by the concerned Governors under para 5 (1) of the Fifth Schedule. Notwithstanding anything in the Constitution, the Panchayat Acts or relevant acts of the Parliament or Legislature of the state for the time being in force, to ensure that there is no ambivalence or contradiction in case of the governance at the village level as a result of diverse legal provisions made from time to time and extended to the Scheduled Areas in routine. In particular, it should provide that the features spelt out in

Section 4 of the PESA should be deemed to comprise basic frame of administration for areas under the Fifth Schedule.

- All terms that are used in the PESA but not defined shall be deemed to have the general meaning of common usage while dealing with any issue in the Scheduled areas notwithstanding any other meanings that are envisaged in any other law for the time being in force.
- The role and responsibilities of the Gram Sabha, the Panchayats and the state as envisaged under various laws and rules made thereunder should be so constructed that the community in the form of Gram Sabha remains central in the scheme of governance at the village level keeping with the spirit of a true democratic polity as envisaged in the PESA while the Panchayats at all levels play supportive role. The State at the apex of formal system should be unequivocally responsible for providing the protective shield against all descriptions of adverse forces.

Tribal Sub-Plan

The Planning Commission has stated that Tribal Sub-Plan (TSP) is an important strategy for inclusion of Scheduled Tribes in the process of development. At the same time, it observes that implementation of TSP has been deficient both in states, and at the Centre. The Twelfth Five year Plan document clearly States that efforts will be made to eliminate or at least minimize the extent of shortfall in allocation of funds under TSP.

There are numerous evidences of slower rate of development of tribals compared to other population. World Bank report states that though welfare indicators for STs are improving the gap between STs and the general population is large and persistent with relatively higher poverty rates, high child mortality rate and increasing exclusion from growth process.

Role of Ministry of Panchayati Raj

Implementation of the PESA holds a key to good governance in Fifth Scheduled areas. It is no secret that the PESA has problem in its implementation in all the nine States. The Planning Commission in its Approach to the Twelfth Five Year Plan states that "weak Administration capacity and poorly functioning institutions of governance in disadvantaged area (such as Fifth Schedule) are an obstacle in development of these areas. These areas also lack local empowerment".

CHAPTER TEN

The Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001

The Fifth Schedule of the Constitution envisages separate laws to administer villages and towns in Scheduled and tribal areas as the provisions of Part IX and Part IX A relating to the Panchayats and the Municipalities respectively do not apply to such areas. Parliament enacted the Provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA) in 1996 for rural, scheduled and tribal areas. However, a similar legislation for urban tribal areas, the Provisions of the Municipalities (Extension to the Scheduled Areas) (MESA) Bill, 2001 was not enacted.

At least, 181 municipalities are functioning unconstitutionally in Scheduled Areas. The following table will explain their state-wise status:

State	Number of municipalities in Scheduled Areas	Number of cases challenging legality of the municipalities
Maharashtra	12	2
Madhya Pradesh	46	5
Chhattisgarh	40	8
Odisha	20	2

This table clearly indicates that as many as 118 municipalities out of a total of 181 are unconstitutionally functioning in these four States where the present study has been conducted. Madhya Pradesh and Chhattisgarh have the most number of municipal bodies in the Fifth Scheduled areas. Some tribal Parliamentarians in these two States have the following response over this issue:

Shri Sohan Potai (Kanker Lok Sabha constituency, Chhattisgarh) says Scheduled Area means tribal area and thus cannot be segregated as rural or urban. Like for a non-vegetarian person we do not say that his stomach is non-vegetarian but the rest of his body is vegetarian.

Shri Harishchandra Deoram Chavan (Dindori Lok Sabha constituency, Maharashtra) spoke about the illegal structures and land acquisition in the Scheduled Areas. This is possible as there are urban bodies and there is no Act to govern urban bodies in Scheduled Areas.

There are many petitions pending in the courts in the above context. In the past few years, tribal rights activists have filed 31 cases against different urban local

bodies calling them illegal. They have also sued state governments for illegally implementing the municipal act in Scheduled areas.

As a result of this lapse, there is a large-scale mining in the Scheduled Areas. The Municipal Act has no provision to protect the traditional and cultural rights of tribes over their land, forests, minerals and other natural resources as provided under the Fifth Schedule of the Constitution.

As per the 1991 Census, there were 167 urban bodies in Scheduled Areas, which later increased. In 2007 and 2009, Chhattisgarh and Madhya Pradesh upgraded 26 and 8 tribal rural areas respectively into municipalities and these are the areas with major industrial investment proposals.

The MESA Bill was prepared based on the recommendations of the Bhuria Committee, which report had paved the way for the PESA Act. The Bill aims to protect the land rights of the tribals and provides for a standing committee on tribal affairs in each municipality. It was introduced in the Rajya Sabha on July 30, 2001 and was referred to the Department-related Parliamentary Standing Committee on Urban and Rural Development, which presented its report to Parliament in November 2003. Till the Monsoon session of 2010, the Bill was enlisted for discussion every session, but no one knows what happened to the Bill after that.

CHAPTER ELEVEN

COMPARISON BETWEEN CONCERNS RAISED IN RAJYA SABHA WHILE PASSING THE PESA & THEIR REFLECTION IN PESA

This chapter compares the discussion held in Parliament while passing the PESA and the actual reflection of the discussion in the Act:

Concerns raised by MPs in Rajya Sabha	Reflection vis-a-vis current status of PESA
<ul style="list-style-type: none"> After enactment of the Constitution, the governments of nine States having Fifth Scheduled Areas, enacted State Panchayat law which did not exclude Scheduled Areas 	<ul style="list-style-type: none"> PESA is enacted exclusively for the Panchayats falling under Fifth Scheduled Areas, and therefore no state Panchayat Act is applicable in these Panchayats.
<ul style="list-style-type: none"> MPs and prominent leaders from Scheduled areas demanded extending provisions of Panchayati Raj to Scheduled areas. Therefore, a Committee was formed under the leadership of Shri Dilip Singh Bhuria 	<ul style="list-style-type: none"> The Panchayats (Extension to Scheduled Areas) Bill (PESA) was drafted on the basis of the recommendations of the Bhuria Committee.
<ul style="list-style-type: none"> The Committee recommended to keep the essential features of tribal community intact and the legislation to follow should be in consonance with the customary laws, social and religious practices. 	<ul style="list-style-type: none"> PESA is enacted to conserve tribal tradition and culture
<ul style="list-style-type: none"> The discussion in Rajya Sabha proposed to have Gram Sabha for each village or a hamlet and empowerment of Gram Sabha should be at the core of the Bill. 	<ul style="list-style-type: none"> The PESA has given larger scope for the empowerment of the Gram Sabhas by entrusting all major decisions to it.
<ul style="list-style-type: none"> Concern was also raised over deprivation of tribal community over their rightful control on natural resources for long. 	<ul style="list-style-type: none"> PESA provides Gram Sabhas & Panchayats the power to prevent alienation of land in Scheduled Areas and restore unlawfully alienated land of a Scheduled Tribe
<ul style="list-style-type: none"> The issue of siphoning off of funds allocated under tribal sub-plan was raised. 	<ul style="list-style-type: none"> The Panchayats and Gram Sabhas are empowered to exercise control over the funds allocated to tribal sub-plan.
<ul style="list-style-type: none"> In Bihar, as pointed out by Shri Jagannath Mishra, large-scale tribal land was acquired by non-tribals. Therefore, local Gram Sabha or Panchayat should be made equally responsible in case of land acquisition related decision making. 	<ul style="list-style-type: none"> PESA empowers Gram Sabha to stop acquisition of tribal land and even restoring unlawful land acquisition.

<ul style="list-style-type: none"> • Shri Nagendra Nath Ojha pointed out that in eviction cases many tribals are behind bars facing criminal charges levelled by Forest Department. So under PESA, the right to stop eviction orders should be given to the Gram Sabha. 	<ul style="list-style-type: none"> • PESA empowers the Gram Sabha to claim their right over natural resources. However, there is no specific provision with regard to eviction orders.
<ul style="list-style-type: none"> • Shri Gopalsinh G. Solanki of Gujarat raised his concern over neglecting the issue of income to Panchayats. He cited the example of Gujarat where the sitting MP was ex-officio member of district Panchayat before the PRI system. 	<ul style="list-style-type: none"> • By adhering to objectives and principles on Scheduled Areas, Panchayats can plan to increase their income. However, the MPs from the Scheduled Areas have no direct role or position under PESA.
<ul style="list-style-type: none"> • Shri Maheshwar Singh of Himachal Pradesh highlighted the difficulties of the tribals of Kinnaur, Lahaul-Spiti, Pangi-Bharmor under Mandi parliamentary constituency and how an MP is not able to reach the tribal population. Thus a separate parliamentary constituency should be created to represent the tribal population of this area 	<ul style="list-style-type: none"> • PESA does not talk of creating any special tribal Parliamentary constituency.
<ul style="list-style-type: none"> • Shri Abdul Gaiyur Qureshi of Madhya Pradesh said that there are some practices exclusive to tribal culture and the PESA should encompass such practices 	<ul style="list-style-type: none"> • PESA strives to preserve the tribal culture.
<ul style="list-style-type: none"> • Smt. Kamla Sinha from Bihar referred to the Manki-Munda system of Chaibasa area of Jamshedpur, where the Gram Sabha has the right to collect revenue and give it to the government. However, at the same time, the Gram Sabha can hold a part of the revenue for their own work. Manki-Munda community villagers themselves chose one head of the Gram Sabha. 	<ul style="list-style-type: none"> • PESA provisions adhere to such practices prevalent in tribal community across the country.

CHAPTER TWELVE

IMPRESSIONS BY THE RESEARCHER

The researcher is actively engaged in working with Panchayati Raj Institutions (PRIs) in the States of Maharashtra, Madhya Pradesh and Chhattisgarh for the last 15 years. During this period, the researcher has had the opportunity to work with tribal members of the Panchayats and also with Panchayati Raj Institutions coming under Fifth Scheduled Areas. The challenges faced by the elected tribal members and tribal Panchayats (in Fifth Scheduled Area) are different from those faced by non-tribal members and non-tribal Panchayats. Their needs and demands have remained neglected for long and the capacity building and empowerment programmes by the Central and State Governments have demonstrated limited impact.

In Indian democracy, the representatives from the lowest tier (Panchayat) to the highest-tier (Parliament) are elected by the people and are entrusted with the responsibilities of raising and addressing the issues of public welfare. In Fifth Scheduled Areas, all the elected members (from Panchayat to Parliament) are tribal members and thus it is very interesting to know the linkage between the representatives from the lowest tier and the highest tier.

It is also important to note that most of the tribal Parliamentarians have first served in the Panchayati Raj Institutions and therefore are expected to be conversant with the PESA. Therefore, the researcher selected the present topic. The researcher would like to note the following observations during the course of the study:

- The tribal Parliamentarians interviewed by the researcher have limited knowledge of the PESA and hence, have not been very effective to make use of the provisions of the PESA to address the problems of their constituency.
- Most of the MPs shared their concern over land rights issue, where the tribals were alienated from their land mostly by private companies and upper caste individuals. The PESA has the answer to this problem, as Gram Sabhas are empowered to decide on land acquisition issues. But this provision was hardly used. Many MPs said that even in cases where Gram Sabha intervenes or opposes land acquisition, those who want to acquire their land get its consent, which in most of the cases is forged. **Thus, MPs from the Lok Sabha constituencies of Dindori (Maharashtra), Keonjhar, Koraput (Odisha) strongly opined that the Gram Sabhas need to be empowered so that they can uphold their rights provided under the PESA.**
- Most of the MPs felt that being a tribal leader/elected representative from the Fifth Scheduled Area, their role should not be restricted to the Tribes Advisory Councils only. Their role should be integrated at all levels of PRIs, which will give them more space and authority to help the Panchayats.
- The Bio-Diversity Act and the Forest Rights Act, which were passed post PESA, are in congruence with the PESA. However, no demonstrative examples were found from the discussions with the MPs where these Acts were used for the welfare and empowerment of the tribal population in Scheduled areas.

- The number of questions raised in the Parliament regarding problems and other development concerns of the tribal population in Scheduled areas are very less. When asked, the MPs opined that there is not enough time to raise the question or for discussion in the Parliament. Some MPs also feel that they are marginalized for being a tribal and from the Scheduled areas.
- During the discussion about the work done by the MPs for the development of their constituency, all the MPs said that development work related to infrastructure, school, college, hostels, etc. But with regard to empowerment or improving Human Development Index (HDI), no initiative was cited by them. When asked to give the example of an effective Gram Sabha, the response was none. The PESA will prove complimentary to their development work.
- The researcher also observed that the PESA is largely used by NGOs, civil society organizations and peoples' movement. The right over bamboo in Lekha-Mendha village in Gadchiroli (Maharashtra) or Niyamgiri forest rights in Odisha are the two recent examples studied by the researcher where the PESA is extensively used by civil society and peoples' movement.
- State Resource and Training Centers in all the States are entrusted with conducting training for elected Panchayat representatives. The researcher visited such training centers in Chhattisgarh and Maharashtra. These centers have very good infrastructure, good faculty and good training material. However, despite their plan and agenda to conduct training on PESA, very limited trainings were conducted for elected representatives. These State training centers can plan training of the elected members and members of Gram Sabha in the Fifth Scheduled Area, as people from these regions are less likely to attend trainings held at the State headquarters.
- The State Training and Resource Centers may also plan to conduct orientation programme on PESA, Forest Rights Act and Bio-diversity Act for the Members of Parliament, as this would help the MPs to work out development plan for their constituency.
- Some Members of the Parliament expressed that there should not be two separate Acts for rural and urban areas falling under Fifth Scheduled areas. They felt that the provisions for Fifth Scheduled areas are applicable to all the tribals residing in the area, irrespective of it being rural or urban. However, there is a Bill pending on the Provisions of the Municipalities (Extension to the Scheduled Areas) Bill, 2001. Therefore, there is an urgent need for the Parliament and Parliamentarians elected from the Scheduled areas to take a stand on this Bill.
- The Ministry of Panchayati Raj has appointed consultants to work on the PESA. This will be useful if the findings of this report and the recommendations by the tribal MPs are also considered by the Ministry.

Through this study, the researcher has tried to gather consolidated information about the PESA in four States. The report has helped understand the ground reality of implementation of the PESA and also brings out the need to consider the suggestions and recommendations by the Tribal Parliamentarians.

In the present times, when the Parliament has passed the National Food Security Bill and the Land Acquisition Bill, it is the right time to understand the ownership of land in Fifth Scheduled areas and the provisions in the Land Acquisition

Bill. Land is getting scarce day by day in urban areas, and most industries and development projects will have to search for land in tribal belts. Thus, in this light, it is important to focus on the provisions of the PESA. The tribal people living in Fifth Scheduled areas are very much affected by poverty, naxalism and lack of basic amenities such as water, health, education, etc. The PESA holds the key to many of these problems. However, there is need for a strong will among the local leadership of these areas to deal with these issues.

The researcher also feels that the present study could be comprehensive after adding the interviews of the Tribal Parliamentarians from the remaining five States having Fifth Scheduled areas (Himachal Pradesh, Gujarat, Andhra Pradesh, Rajasthan and Jharkhand).

ANNEXURE 1

List of Tribal Parliamentarians From Lok Sabha and Rajya Sabha & Fifth Scheduled areas of their constituency

SNo	Name of the MP	Constituency	Fifth Scheduled Area under constituency	State
1	Shri Kantilal Bhuria	Ratlam Lok Sabha Constituency	Ratlam, Sailana	Madhya Pradesh
2.	Shri Basori Singh Masram	Mandla Lok Sabha Constituency	Mandla- Dindori	Madhya Pradesh
3.	Shri. Gajendra Singh Rajukhedi	Dhar Lok Sabha Constituency	Jhabua	Madhya Pradesh
4.	Smt. Rajesh Nandini Singh	Shahdol Lok Sabha Constituency	Shahdol, Pushprajgarh, Sohagveer	Madhya Pradesh
5.	Shri Makhansingh Solanki	Khargone Lok Sabha Constituency	Khargone, Badwani, Rajpur, Sendhva, Maheshwar, Bheekhangaon	Madhya Pradesh
6.	Smt. Jyoti Dhurve	Betul Lok Sabha Constituency	Betul, Bhainsedehi, Aathner	Madhya Pradesh
7.	Miss Anusuiya Uikey	Rajya Sabha member	Tamia, Jamui	Madhya Pradesh
8.	Shri Harishchandra Deoram Chavan	Dindori Lok Sabha Constituency	Dindori, Peth, Surgana, Kalvan, Baglan, Igatpuri	Maharashtra
9.	Shri Manikrao Hodlya Gavit	Nandurbar Lok Sabha Constituency	Sakri, Navapur, Shahada, Shirpur	Maharashtra
10.	Shri Baliram Sukur Jadhav	Palghar Lok Sabha Constituency	Dahanu, Talasari, Mokhada, Javhar, Wada, Shahapur	Maharashtra
11.	Shri Marotrao Sainuji Kowase	Gadchiroli-Chimur Lok Sabha Constituency	Etapalli, Aheri, Dhanora, Kurkheda	Maharashtra
12.	Shri Dinesh Kashyap	Bastar Lok Sabha Constituency	Bastar district	Chhattisgarh
13.	Shri Sohan Potai	Kanker Lok Sabha Constituency	Kanker, Kondagaon,	Chhattisgarh
14.	Shri Vishnu Deo Sai	Raigarh Lok Sabha Constituency	Jaashpur, Udaipur, Gharghoda, Kharsiya	Chhattisgarh
15.	Shri Murarilal Singh	Surguja Lok Sabha Constituency	Surguja district	Chhattisgarh
16.	Shri Nand Kumar Sai	Rajya Sabha member	Raigarh	Chhattisgarh
17.	Shri Yashbant Narayan Singh Laguri	Keonjhar Lok Sabha Constituency	Keonjhar	Odisha
18.	Shri Pradeep Majhi	Nabarangpur Lok Sabha Constituency	Nabarangpur	Odisha
19.	Shri Jayaram Pangi	Koraput Lok Sabha Constituency	Koaraput	Odisha
20.	Shri Laxman Tudu	Mayurbhanj Lok Sabha Constituency	Mayurbhanj	Odisha
21.	Shri Hemanand Biswal	Sundergarh Lok Sabha Constituency	Sundergarh District	Odisha

ANNEXURE 2

Questionnaire

1. Name of the tribal parliamentarian:
2. Name of the constituency:
3. District, State:
4. Age:
5. Political Party:
6. Tenure as Member of Lok Sabha/Rajya Sabha:
7. Profile of the constituency coming under Fifth Scheduled areas, its problems and works done by the Member of Parliament:
8. Understanding about the PESA and how do they differentiate between the PESA and Panchayati Raj Act?
9. Status of the PESA implementation in the State and whether the Tribes Advisory Council (TAC) has been formed at the State headquarters? The role of MP in the TAC?
10. What are the main hurdles in implementing the PESA in their constituency? The efforts made by MP in implementing PESA?
11. The questions raised in LS/ RS about the PESA and about welfare of tribal community?
12. Comment on Biological Diversity Act, Forest Rights Act and PESA.
13. Issues related to land acquisition, minor forest produce, minor irrigation projects, minor minerals and the PESA provisions?
14. How do they see their image as Tribal leader and representative of tribal community in Lok Sabha/Rajya Sabha?
15. Do they feel the need to come together as member of Lok Sabha/ Rajya Sabha for the cause of tribal community?
16. What are the suggestions to strengthen Gram Sabhas in Fifth Scheduled Areas?
17. Comment on the major challenges faced by the Fifth Scheduled Areas, like naxalism, migration, poor communication etc?
18. Suggestions to improve PESA
19. Suggestions with regard to their role in terms of planning, decision making and use of resources in Fifth Scheduled Areas?
20. Their plans to strengthen the PESA.

ANNEXURE 3

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (No. 40 of 1996) (24th December, 1996)

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

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

Short Title:

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

Definition

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

Extension of Part IX of the Constitution

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

Exceptions and modifications to Part IX of the Constitution

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:
 - a) A State legislation to the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
 - b) A village shall ordinarily consists of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
 - c) Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
 - d) Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution:
 - e) Every Gram Sabha shall -
 - i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level.
 - ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.

- f) Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects referred to in clause(e).
- g) The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution:
-- provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats.
-- provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.
- h) The State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level -
provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat .
- i) The Gram Sabha or the Panchayats at appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.
- j) Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.
- k) The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas.
- l) The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction.
- m) While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and Gram Sabha are endowed specifically with:
- (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
 - (ii) the ownership of minor forest produce;
 - (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
 - (iv) the power to manage village markets by whatever name called;
 - (v) the power to exercise control over money lending to the Scheduled Tribes;

- (vi) the power to exercise control over institutions and functionaries in all social sectors;
- (vii) the power to control over local plans and resources for such plans including tribal sub-plans;
- (n) The State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.
- (o) The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing administrative arrangements in the Panchayats at the district levels in the Scheduled Areas.

Continuance of existing laws on Panchayats:

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

-- provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in case of a State having Legislative Council, by each House of the Legislature of that State.

K. L. MOHANPURIA,
Secy. To the Govt. of India

ANNEXURE 4

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