

# **PESA in Kerala: Tasks Ahead**

## **Dossier**

**[Published for National Seminar on 29-30 April 2016 at KILA]**



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## **Preface**

The Tribal population of India had a self- governing system based on customary practices. All the functions associated with their life were controlled, regulated, and disputes resolved, through their own traditional mechanisms. In fact, there was no need for any outside interference on their self-rule system. The democratic polity has failed to understand the strength of tribal communities social milieu and ignored the lessons to be learned from them. Though late the 'historic injustice' against the Forest dwelling Tribes has been corrected through the enactment of Forest Rights Act (2006). The implementation of PESA (1996), has resulted in another corrective measure which recognized the centrality of the Tribal Grama Sabha. The provisions contained in the Grama Sabha/Ward Sabha of the Local Self Governance System is also people centric. It is hoped that both these concepts, which are not to function in isolation, shall bring about a better understanding of true democratic practices.

A preliminary one day workshop organized by KILA on 21 February 2016, in the presence of Chairpersons of the Panchyats to be included under PESA and a few activists, have raised many questions that need to be tackled at the policy and operational levels. Therefore, the National Seminar on 'PESA in Kerala: Task Ahead' is mainly intended to share the experiences of the experts and activists from PESA States. It is expected that such an exercise would help to revisit and redefine the strategies to be adopted in Kerala, while stepping into an advanced form of Local Governance where Grama Sabha is supreme. It is also aimed at following an accepted norm that proper communication and dissemination of knowledge, at all levels, should go ahead before launching such a vigorous programme of this kind.

**Dr.P.P.Balan**

23/April/2016



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# 1

## Scheduled Areas

### Historical Background

Before the advent of colonial rule in India, the indigenous population, who were later known as Tribals, had led an independent *gothra* life and managed their own affairs. Each community has a territorial division and followed customary laws relating to their political, social, economical and religious affairs. The idea of community ownership of land and the practice of sharing the resources judiciously were noticeable. The earliest forms of local self-rule had been native to their mind set.

The relationship between the local or regional kingdom and the tribal population was primarily based on mutual trust and respect, with a few exceptions. There was no outside interference for the tribals. In the initial phase, the Britishers also thought not to interfere the tribal areas. But the entry of two types of outsiders viz. native and foreign, disturbed the Tribal areas. Firstly the exploitation of land lords resulted in the revolt of Mal Paharas of Rajmahal hills in 1796. The Britishers had to handle the situation and, there they understood the necessity to have a distinct arrangement for the Tribal areas. Secondly, the Britishers themselves had to face the resentment of the Tribals of Chhotanagpur when they wanted to exploit the natural resources like valuable forest wood and minerals. In all, there were 140 revolts led by the Tribals during the British period against the various types of exploitations and forest regulations.

The importance of the knowledge of the native people was realized by the Britishers for better administration. A major project for this purpose was launched since 1807, starting from the ethnographic survey 'to enquire into the conditions of the inhabitants of Bangal and their religions by Dr. Francis Buchanon. This was followed by the studies of anthropologists and administrators like Riseley, Thurston, Dalton, Hutton and others, who prepared descriptive accounts of the habitat, economy, customs and traditions, social organizations etc. In the light of these studies, the administrators

could understand the dangers of extending normal laws to the tribal people. They were very simple and unsophisticated to digest the implications of the enforcement of laws enacted for the general population and the different level of judicial process involved in it. So it was found that the provisions of the laws may sometimes become detrimental to the progress of the Tribals. The Tribal movements also forced the British authorities to think differently and as a result they adopted various ways and means to protect the Tribals from the clutches of exploiters and also to promote the traditional tribal customs as well. Consequently, in 1833 Chhotanagpur was declared as a non-regulated area, followed by the Scheduled Districts enactment of 1874, which empowered the respective head of the administrators to modify any enactment in force. In short, the executive was given the power to exclude these areas from the normal operation of general laws so as not to expose them and make victims of the various enactments brought into force from time to time.

The Montague – Chelmsford Report of 1918 reported that the political reforms suggested for the rest of India could not apply to these backward areas. The Government of India Act 1919, classified these tracts, as some areas are so backward and as such should be 'wholly excluded' from the scope of the reforms. A system of 'modified exclusion' was applied to the other backward areas.

The Simon Commission has visualized a policy for Tribal areas. The Commission observed, "the responsibility of Parliament for the backward tracts will not be discharged merely by securing to them protection from exploitation and by preventing those outbreaks which have from time to time occurred within their borders. The principal duty of the administration is to educate these people to stand on their own feet, and this is a process which has scarcely begun". The Commission was also of the opinion that '**perpetual isolation**' from the main currents of progress would not help for the long term solution.

The Constitutional Reforms of 1938, was against the centralization of administration of these areas. So the Govt. of India Act, 1935, declared these backward areas as EXCLUDED and PARTIALLY EXCLUDED areas. The Constituent Assembly after detailed discussion and verification has decided to have two classifications.



Thus, the Constitution of India, 1950 has declared the areas predominantly inhabited by the tribal people as 'Scheduled Areas' under 5<sup>th</sup> Schedule and the 'Tribal areas of Assam, Meghalaya, Tripura and Mizoram under the 6<sup>th</sup> Schedule and the latter has autonomous District and Regional Councils (nine districts in all) each having not more than 30 members. These councils serve as an instrument of self-management and have powers of legislation and administration of justice, besides executive, developmental and financial responsibilities. At the lower level they have village councils.

### **Constitutional Provisions – Scheduled Areas**

Article 244 – Administration of Scheduled Areas and Tribal Areas

- (1) The provisions of the Fifth Schedule shall apply to the administration and control of Scheduled Areas and Scheduled Tribes in any States (other than the States mentioned in the Sixth Schedule)
- (2) The Provisions of the Sixth Schedule shall apply to the administration of Tribal areas within the States of Assam, Meghalaya, Tripura and Mizoram.

The term 'Scheduled Areas' has been defined in the Indian Constitutions as "such areas as the President may be order declare to be Scheduled Areas". Paragraph 6 of the Fifth Schedule of the Constitution prescribes following procedure for scheduling, descheduling and alteration of Scheduled Areas.

"6. Scheduled Areas – (1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas.

- (2) The President may at any time by order –
  - (a) Direct that the whole or any specified part of a Schedule Area shall cease to be a Scheduled Area or a part of such an area;
    - (aa) Increase the area of any Scheduled Area in a State after consultation with the Governor of that State;
  - (b) Alter, but only by way of rectification of boundaries, any Scheduled Area;

- (c) on any alteration of the boundaries of a State on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
- (d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas.

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order”.

Thus the specification of Scheduled Areas in relation to a particular State/Union Territory is by a notified Order of the President, after consultation with the State Governments concerned. The same procedure will apply while altering, increasing or rescinding any order(s) relating to Scheduled Areas.

### **Law Applicable to Scheduled Areas**

- (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the **Legislature of the State shall not apply to a Scheduled Area** or any part, thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modification as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.
- (2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may –

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;

- (c) regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such area.
- (3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
- (4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
- (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

### **Criteria**

The criteria followed for declaring an area as Scheduled Area are

- (a) preponderance of tribal population;
- (b) compactness and reasonable size of areas
- (c) under-developed nature of the areas
- (d) marked disparity in economic standard of the people.

These criteria are not spelt out in the Constitution of India but have become well established. They embody principles followed in declaring 'Excluded' and 'Partially-Excluded Areas' under the Government of India Act 1935, Scheduled 'B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and the Scheduled Area and Scheduled Tribes.



**The Provisions of PESA  
(Panchayats Extension to the Scheduled Areas) Act, 1996  
No. 40 of 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:*

1. This Act may be called the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996
2. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.
3. The provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.
4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-
  - (a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
  - (b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its 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 safe guard 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 of 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 utilisation 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 the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and

implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

- (j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;
- (k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas;
- (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 the Gram Sabha are endowed specifically with-
  - (i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
  - (ii) the ownership of minor forest produce;
  - (iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
  - (iv) the power to manage village markets by whatever name called;
  - (v) the power to exercise control over money lending to the Scheduled Tribes;
  - (vi) the power to exercise control over institutions and functionaries in all social sectors;
  - (vii) the power to control over local plans and resources for such plans including tribal sub-plans;

- (n) the State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha;
  - (o) the State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas, immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President;

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



### 3

## People's Assertion

Self-government is an inalienable right of every community. It is a natural endowment like air and is the very essence of the social reality in the human kind. It is the life-breath of a democratic polity. It evinces no solicitation. Any idea of bestowal of powers on a community concerning self-governance in an expression of arrogance associated with power, which essentially is perversion of the System. No one who believes in democracy can ever raise any question about the competence and capability of a people for managing their own affairs. The right to commit mistakes and learn from experience is the firm foundation of progress in every field of life. Democratic polity cannot be an exception.

It is in pursuance of this approach that we did not wait for the formal implementation of Bhuria Committee Report by the government and launched the Civil Disobedience Movement on October 2, 1994 asserting the right of self-government at the village-level. The content of the programme obviously varied from one place to another depending on the local situation, including the preparedness of the people. There are areas where the writ of the Community reigns supreme. Nevertheless, we are still at the stage of conscientisation and spread of the message 'our village our rule' in most of the tribal areas. However, the urge for self-rule has become universal simply because *hamare gaon me hamara raj'* is not an exotic slogan but is an expression of the people's deep-seated aspirations.

The new law makes a sea-change in the above situation and casts a grave responsibility on the organization. As has been made clear repeatedly earlier, even though the law has the appearance of an enabling provision, certain items of vital nature for the community have become operational on December 24, 1996. They can be summarized as follows:

- (i) the community, comprising all persons in a habitation or a groups of habitations, and managing its affairs in accordance with traditions and customs assumes the status of *Grama Sabha*.
- (ii) The *Gama Sabha* stands endowed with necessary powers 'to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'.
- (iii) The *Gram Sabha* is bestowed with powers concerning local development in the village as also social audit of expenditure by the Village Panchayat.
- (iv) Consultation with *Gram Sabha* in all case of land acquisition as also resettlement and rehabilitation programmes becomes mandatory.

A number of other powers concerning minor minerals, ownership of minor forest produce, prohibition as also regulation of sale and consumption of intoxicants, restoration of unlawfully alienated law, management of market, control over money leading are to be bestowed by state Legislature within a year. It is now only a matter of time and preparation for assuming these responsibilities is meaningful and responsible way to begin with.

The *Gram Sabha* is the pivot of the entire edifice. Even though the *Gram Sabha*, which is *Swayambhu*, acquires that formal status on the dot, as the President gave his assent to the Bill, it is necessary that the community, which has been accorded that recognition, also realizes the same with full significance thereof. Moreover, the fact that the community now stands recognized is made explicit and visible so that all concerned become aware about the same. It is possible that there may be some doubts or even multiple claims, about the geographical expanse of the habitation or group of habitations comprising the community.

The recognition of the community by the State, which so far has refused to recognize it, leading to confrontation and even revolts, is a historic event in the life of the people who have been facing the brunt and brutalities. It will, therefore, in keeping with the epochal character of that change that a solemn ceremony is organized by every community, big and small, which with mark the ushering in of a new era of self-governance a goal for which great

sacrifices have been made by them generation after generation. Once the solemn ceremony has been performed, the people must attend to the serious task of managing their affairs particularly with regard to the matters in which the responsibility has already got devolved on the people. It is possible that the administration and other institution may not be ready for such a drastic change with the suddenness of the bolt from the blue'. This is understandable as is clear from the way the new Act of such great epochal importance for the health of the democratic polity, has been totally ignored, that too in that phase of our national life when almost all institutions stand discredited. The great transformation implicit in the new provisions is simply unbelievable in the ordinary course.

**This means that a systematic campaign for dissemination of information at all levels beginning at the village, through block, district, state to the nation is taken up forth with.** Moreover, serious discussion must also begin about the basic concepts and the related overall world-view to avoid distortions and deviations which may harm the cause if not checked in time. The possibility of opportunists and vested interests adopting radical slogans without even understanding their real content cannot be ruled out. This has already happened in the case of radical formulations like '*Hamare Gaon Men Hamara Raj*', '*Jal-Jangal-Zamin Hamare Han*', '*Kagaz Tumhara Zamin Hamari*'. Once the radical content is made explicit, the opportunists will disappear from the scene.

While the main scene of our activity will be the Gram Sabha and the assertion of authority in matters mentioned earlier, organization should be built up at the block level as also the district level, corresponding to the two levels of Panchayats which in their turn have to be built up as institutions of self-government at their level. This is also a major task which is not on the agenda of any political party or even the government, which has made a provision to that effect in Part IX of the Constitution.

[Excerpts from Task Ahead-2, People's Assertion from the book entitled 'Tide Turned', the makings of Tribal Self-Rule in the first central law in the wake of Bhuria Committee Report, by Dr. B.D. Sharma (1977) published by Sahyog Pustak Kutir, New Delhi.



## A Brief Note on the Status of the Scheduled Tribes of Kerala

### Demography

- Total population as per 2011 Census is 484839 which is 1.28% of the total population
- Sex ratio is 1000:1031
- Total no. of families 107965
- Average family size is 3.95%
- 37 Scheduled Tribal Communities
- Of them 5 communities are recognized as Particularly Vulnerable Tribal Groups (PVTG's) viz Koraga, Kattunayakan, Cholanaikkan, Kadar and Kurumbar (6.17%) of the total Tribal Population
- Highest concentration of ST population is in Wayanad District (35.85%), followed by Idukki (12.33%), Kannur (11.17%), and Palakkad Districts (10.95%).
- Lowest ST Population is from Alappuzha District (0.7%)
- 18 Communities are distributed in any one of the 14 Districts
- 19 communities are spread in more than one District
- 8 Communities have a population below 1000
- 14 Communities have a population above 10000 and below 40000
- The largest Community is Paniyan (88450)
- The smallest community is Aranadan (283) as certain small communities having small population are part and parcel some other communities.
- **Table 1** shows details of Tribe wise Population and their geographical spread.

## **Habitat**

- A cluster of five or more households has been recognized as a 'Ooru' (hamlets ) for the implementation of developmental schemes
- Total number of Ooru identified 4762
- Majority of the population are distributed in hamlets
- 14218 houses in Ooru have no proper access (13.88%)
- There are homogenous and heterogeneous hamlets
- 540 Oorus are within the reserve forest (11.34%)
- 979 Oorus are near the Reserve the forest (20.56%)
- In all 42.41% Families are forest depended
- 70% of hamlets are without Anganwadies within the Ooru
- 13% hamlets are out of reach of Anganwadies
- PESA is expected to cover - 2445 Oour (51.34%)
- **Table 2** shows the family size of the hamlets

## **Education**

### **Literacy**

- 74.44% Literacy of ST Population
- 93.91% Average State level literacy
- 19.47% Disparity
- 57.63% Palakkad District Lowest
- 94.31% Kottayam District Highest
- 39.67% Cholanaickan community – Lowest
- 96.87% Malai Arayan community – highest (because of history of literacy since 1848)
- Imbalances created in growth starts from here

### **General Education**

- Representation of the Tribal population in higher education is meager

- 03.78% Neo – literates
- 46.81% Primary
- 33.45% Below SSLC
- 11.15% SSLC pass
- 06.02% PDC/Plus Two
- 01.65% Degree Level
- 00.32% PG Level
- 00.12% Others

### **Dropouts**

- 46.02% Primary
- 38.56% Secondary
- 04.42% Higher Secondary
- 01.47% Degree
- 00.58% PG
- 06.05% Certificate Course
- 02.89% Other Courses
- Highest dropout is reported from the Paniyan community
- 70% dropouts are children of agricultural laborers
- 80% have shown the reason of poverty

### **Health**

- 547 practitioners of traditional medicine
- 13.09 Families suffer from acute nutritional deficiency
- Inaccessibility and lack of better services
- 17.96 % of the families are differently abled and mentally retarded persons
- 30.88% of the families are having persons who suffer from Chronic diseases

## Land Possession

- Only 29.52% of the families are having more than 1 acre
- 32.80 % of the families are having below 10 Cents
- **Table 3** shows the extend of land possessed by the Tribal Families
- The Pressure for land demand can be understood from this table

## Occupation

- The main occupational status of Individuals are follows:
- 177910 No Income (46.21%)
- 111636 Agriculture Labourers (29.00%)
- 28514 Agriculturist (07.41%)
- 19794 Non Agricultural Labourers (5.14%)
- 11752 MGNREGES (3.05%)
- 10939 Forest Labourers (2.84%)
- 8966 Government Jobs (2.33%)
- 4261 Minor Forest Produce Collection (01.11%)
- 4114 Animal Husbandry (1.07%)
- 1759 Permanent Job In Private Sector (0.46%)
- 1321 Estate Worker (0.34%)
- 1287 Traditional Crafts (0.33%)
- 755 Permanent Job in Estates (0.20%)
- 790 ST Promoters (0.21%)
- 651 Collection of Medicinal Plants (0.17%)
- 189 Permanent Job in Forest Department (0.05%)

## Unemployed persons

- 55876 Persons between age group 15-29 (66.36%)
- 14918 Persons between age group 30-44 (17.72%)



**Table 1:****Scheduled Tribe - Wise Population of Kerala and Districts as per 2011 Census**

(As per the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 2002 (Act 10 of 2003) Vide part -VIII- Kerala- Second Schedule notified in the Gazette of India, dt.8.1.2003)

Sl.	Community	Population	Districts
1	Adiyan	11526	Wayanad
2	Arandan (Aranadan)	283	Malappuram
3	Eravallan	4797	Palakkad
4	Hill Pulaya, (Mala Pulaya, Kurumba Pulayan, Karavazhi		
5	Pulayan, Pamba Pulayan)	2954	Idukki
6	Kadar, (Wayanad Kadar)	2949	Kadar in Thrissur and Palakkad Wayanad Kadar in Wayanad and Kozhikode
7	Irulan, Irular	23721	Palakkad
8	Kanikaran, Kanikkar	21251	Thiruvananthapuram, Kollam
9	Kattunayakan	18199	Wayanad, Kozhikkode, Malappuram, Palakkad
10	Kochuvelan	38	Pathanamthitta
11	Koraga	1582	Kasaragod
12	Kudiya, Melakudi	785	Kasaragod
13	Kurichan, (Kurichian)	35171	Wayanad, Kannur, Kozhikode
14	Kurumans, (Mullu Kuruman, Mulla Kuruman, Mala Kuruman)	24505	Wayanad
15	Kurumbas, (Kurumbar, Kurumban)	2586	Palakkad
16	Maha Malasar	154	Palakkad
17	Malai Arayan (Mala Arayan)	33216	Idukki, Kottayam, Ernakulam, Pathanamthitta
18	Malai Pandaran	2422	Kollam, Pathanamthitta
19	Malai Vedan (Malavedan)	8149	Kollam, Pathanamthitta, Kottayam, Idukki
20	Malakkuravan	175	-
21	Malasar	3195	Palakkad
22	Malayan, Nattu Malayan, Konga Malayan (Excluding the areas comprising the Kasaragode, Cannanore, Wayanad and Kozhikkode District)	5917	Thrissur, Palakkad, Ernakulam

23	Malayarayar	1568	Sames as in Serial no 16
24	Mannan (to be spelt in Malayalam script in Parenthesis)	9780	Idukki
25	Muthuvan, Mudugar, Muduvan	23746	Idukki, Ernakulam, thrissur, Palakkad, Malappuram, Kozhikode
26	Marati	27824	Kasaragod
27	Palleyan, Palliyan, Palliyar, Paliyan	1464	Idukki
28	Paniyan	88450	Wayanad, Kannur, Kozhikode, Malappuram, Palakkad
29	Ulladan(Ullatan)	16230	Alappuzha, Kottayam, Idukki, Ernakulam, Thrissur
30	Uraly	11179	Idukki
31	Malavettuvan (in Kasaragod and Kannur Districts)	17869	Kasaragod, Kannur
32	Ten Kurumban, Jenu Kurumban Thachanadan	25	Wayanad
33	Thachanadan Moopan	1745	Wayanad
34	Cholanaickan	124	Malappuram
35	Mavilan	30867	Kasaragod, Kannur
36	Karimpalan	14098	Kannur, Kozhikode, Wayanad
37	Vetta Kuruman	739	Wayanad
38	Mala Panickar	1023	Malappuram

**Table 2: Family size and No. of Hamlets**

Sl. No	Family Size	No. of hamlets	Percentage
1.	5 – 9 Families	1473	30.93
2.	10 – 24 Families	2056	43.18
3.	25-49 Families	835	17.53
4.	50-99 Families	322	6.76
5.	Above 100	76	1.66
	<b>Total</b>	<b>4762</b>	<b>100.00</b>

**Table 3: Extent Of Land Possessed by the Tribal families**

<b>Sl. No</b>	<b>Extent Of Land</b>	<b>Families</b>	<b>Percentage</b>
1.	Below 5 Cents	20320	18.64
2.	5- 9 Cents	15191	14.16
3.	10 – 24 Cents	16806	15.66
4.	25 – 49 Cents	9724	09.06
5.	50 – 99 Cents	13584	12.66

[Source: the above statistical data, except the figures in Table 1, are drawn from the report on the socio economic status scheduled tribes of Kerala based on the survey conducted under the joint auspices of KILA and STDD during 2008-2009].



## Sub Themes for Reflections

### 1. Ethnographic Profile

- Community specific data
  - Agriculturalist
  - Marginal farmers
  - Agricultural workers
  - Forest dwellers
- Customary laws of 15 communities coming under PESA in Kerala
- Whether the States implementing PESA has codified customary laws or not.
- In the absence of codification of laws, oral statements can be considered or not.
- If the traditions and customs of the community have been eroded, what will be the options.
- Whether the level of development of each community has been assessed or not.

### 2. Resource Management/ Consultation/ Recommendation

- a) Natural Resources
  - Land alienation
  - Land acquisition
  - Mining
  - Water bodies
  - Eco system
  - Conservation according to FRA
- Whether the PESA implemented states have amended laws in consonance with the letter and spirit of the Act. The

problems faced by them in executing the provisions can be detailed.

b) Ownership of Minor Forest Produce.

The present system in Kerala is

- Through Tribal co-operative societies
- Vana Samrakshana Samithi (VSS)
- Through petty traders
- Whether the PESA areas has implemented minimum price value for MFP
- Whether enough support system like TRIFED has been provided
- Whether value addition and marketing are going on the desired level
- Whether the community rights and FRA are integrated with centrally sponsored schemes.

c) Tribal Sub - Plan.

- The Gramasabha has the power to control over local plans for such including Tribal Sub-Plans and identification or section of persons and beneficiaries under the poverty alleviation etc.
- Whether there is a marked difference in development – in Scheduled and Non-Scheduled areas or not
- Whether the planning, implementation, monitoring, and certification of utilization of funds are carried out by Grama sabhas
- Whether the Grama Sabha has been able to control its institutions and functionaries in all social sectors.
- Whether the Grama Sabha is able to manage village market, control over money lending, enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
- Finally whether there is any qualitative change is fund utilization which is tailored to the needs and aspirations of the people.

### **3. Educating Grama Sabhas**

The existing system in Kerala is as elsewhere, there is a Grama Sabha for all. In Kerala, since 2003 for the Tribal population an exclusive 'Oorukoottam' has also been designed to make it more tribal friendly. For the purpose of FRA there is also an Oorukoottam which in essence is the Grama Sabha mentioned in FRA. Admittedly the forest dwellers are far behind development. The dialect or language used by them are distinct.

- Under the circumstances whether the training module prepared to empower Grama Sabha is according to community specific issues or not.
- Whether the training programme has adopted any new techniques to educate pre-literate people? If so detailed there on.
- Whether there is selection of resources persons for training from among the communities or not.
- The duration of the capacity building can be mentioned along with the institutions engaged to train Grama Sabhas
- The problems confronted by your State and the solutions taken to remedy the situation can be detailed.

### **4. Identification of villages – demarcating habitats**

- Identification is at Panchayat level and not in Village Level
- 4 Panchayats to be fully covered by PESA
- Other Panchayats/Municipalities – Either covered Ward wise with in a PRI or on the basis of listed habitats within PRI.
- Modalities followed by other States especially by Maharashtra and Andhra Pradesh – on demarcating small areas within a Panchayat.
- Administration within a Panchayat on Scheduled and non-Scheduled areas by two sets rules – experiences.

### **5. Reservation of Seats**

As already mentioned only the entire area of four Panchayats are to come under Scheduled area. In the case of other Panchayats a specific number of tribal habitats are provisionally

selected for Scheduling. Under the circumstances, at the operational level, a number of doubts arise.

- Whether the total population of the Tribes in a Panchayat is than 20%, can this Panchayat have a majority representation of elected members? And whether your State has faced such a situation?
- Whether contiguous habitats can be carved out to form a new Panchayat or not.
- Whether the nomination of unrepresented communities at middle and upper level, has been strictly followed or not, and whether they have been given voting rights or not.
- Whether there is conflict between the people of Scheduled areas and non-Scheduled areas? If so, how you have resolved the issue.

## **6. PESA and amendments of other Acts by Legislation**

PESA has envisaged to amend the existing laws to keep in conformity with the provision of the Act. For instance identify the provisions to be amended in the following Acts.

- Kerala Panchayat Raj Act
- Kerala Municipal Act
- Kerala land Alienation Act
- Kerala land Acquisition Act
- Central Forest Right Act
- Central Indian Forest Act
- Central mines and Minerals Act
- Central Wild Life Conservation Act
- Central Bio-Diversity Act. Etc...
- Whether the States have amended various States and Central Acts with in a time frame? What are the causes for its delay if any?
- Whether the Centre has proposed any amendment to the existing provisions of PESA like changing the minor water bodies to major also
- And from your experiences whether the PESA needs any further clarification for its smooth functioning



### **Extracts from the deliberations of the Constituent Assembly (1946)**

"If there is any group of Indian people that has been shabbily treated it is may people. They have been disgracefully treated, neglected for the last 6,000 years.... This Resolution is not going to teach Adibasis democracy. You cannot teach democracy to the tribal people; you have to lean democratic ways from them. They are the most democratic people on earth. What my people require is not adequate safeguards... we do not ask for any special protection. We want to be treated like every other Indian.... The whole history of my people is one of continues exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pandit Jawahar Lal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected." Jaipal Singh, Member, Constituent Assembly