PROCEEDINGS OF NATIONAL SEMINAR

ON

PESA IN KERALA: TASKS AHEAD

(Panchayat Raj Extension to Scheduled Areas 1996)

29-30 April 2016

Venue: Belwanthrai Mehta Hall, KILA

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PESA IN KERALA: TASKS AHEAD

(Panchayat Raj Extension to Scheduled Areas 1996)

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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. Infact, there was no need for any outside interference for their self- rule. The democratic polity has failed to understand the strength of their social organization and ignored the lessons to be learned from them. Though late the 'historic injustice' against to the Forest dwelling Tribes has been corrected through the enactment Forest Rights Act (2006). The implementation of PESA (1996), has resulted in another correction and there by recognized the centrality of the Tribal GramaSabha. The provisions contained in the GramaSabha/Ward Sabha of the Local Self Governance system is also people centric. It is hoped that both these concepts, not to function in isolation, shall enrich a better understanding of the true democratic practices.

A preliminary one day seminar organized by KILA on 21st February 2016, in the presence of Chairpersons of the Panchyats to be included under PESA and a few activists, have raised many questions at the policy and grassroot levels. Therefore, a two day National Seminar on 'PESA in Kerala: Tasks Ahead' was organized on 29-30 April 2016 to share the experiences of the experts and activists from PESA States. The technical sessions of the seminar has viewed PESA from different angles in the context of the co-existence between the traditional and modern democratic system of Local Governance. The deliberations have generated the strategies to be adopted in Kerala while stepping in to a new form of Local Governance where Grama Sabha is supreme. The suggestions and recommendations of the seminar are expected to set vision and mission for Tribal Development in Kerala. I thank all the learned scholars who have contributed their valuable experiences in this regard.

Dr. P. P. Balan

15/03/2017 Director, KILA

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1

SEMINAR OUTCOME AND WAY AHEAD

I
THE SEMINAR OUTCOME AND WAY AHEAD

1.1 Situating PESA

1. The popular notion of Grama Sabha in Kerala is the one associated with and after the introduction of the Kerala Panchayat Raj Act 1994. Whereas the Grama Sabha adopted in PESA – the PESA Grama Sabha -is the one historically evolved and in practice among the tribal communities.

2. The present debate of the rights of tribal communities stems from three key recognitions; (a) Article 244 of the Indian Constitution 1950, that declared Scheduled Area which applies to 'Administration of Scheduled Areas and Tribal Areas', (b) Enactment of PESA 1996, an Act to extend Panchayats to the Scheduled Areas, thereby creating a unit of governance, and (c) The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (FRA 2006 in short) that seek to recognize and vest the forest rights and occupation in forest land in Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers.

3. Through these three core binding instruments, the recognized rights to tribal communities evolved and refined further; (a) Article 244 provides provisions to Administration and Control of Scheduled Areas but lackeda definition of what should be the unit of area to be included under Scheduled Area. (b) PESA refines this by recognizing the Grama Sabha (the tribal Grama Sabha) as a statutory authority and confers ownership rights of minor forest produce (MFP) to it along with powers to control and prohibit several activities. (c) FRA further broadened the scope Grama Sabha jurisdictions with detailed and practical way to identify the villages and power to protect, use and manage forests.

4. PESA as of now is not applicable to Municipality areas. However, there is a bill - Municipalities (Extension to Scheduled Areas) Bill 2001 – which the Parliament is yet to enact. Several states take advantage of the absence of this bill by upgrading Panchayats to Municipalities that nullifies the PESA provisions and thereby the rights of the tribal community.

5. In the absence of clarity and lack of examination by both the Central and State governments there is ambiguity between PESA and Panchayati Raj structures. The structure of PESA Grama Sabha makes it clear that the structures above should not encroach into the powers and functions of the Gram Sabha, and the structure above the Gram Sabha should be patterned on the Sixth Schedule. But in practice, PESA Gram Sabha is fitted into Panchayat Raj structure where the structures above the Gram Sabha are empowered and PESA Gram Sabha literally loses all powers. Whereas in PESA the Grama Sabha is the centre of power.

6. A grave set back to tribal community in Kerala is that there is no Scheduled Area in Kerala as there is no Block or Taluk with more than 50% tribal population in the State, which is the prime conditionality. Now it has been changed as 'Preponderance of Tribal Population' Kerala only have two Panchayats, Puthur Grama Panchayat in Attappady Block in Palakkad district and Noolpuzha Village in Wayanad district that have more than 40% of tribal population. Kerala Also have one Tribal Grama Panchayat viz, Edamalakudy in Idukki District, having 100% Tribal Population.

1.2 Summary of Discussion.

The Seminar through presentations and discussions considered PESA from different angles and perspectives. Some of the major learnings are:

1. Identified the powers, strengths and weaknesses of PESA
   - Recognizes the traditional Grama Sabha and that it is the core of PESA
   - Endow the tribal community with rights over resources, control and prohibitory powers
   - Extremely weak and inadequate Rules to operationalize, that too enacted only by five States
2. That PESA is the fruit of peoples' struggles and not a mere piece of legislation gifted by government
   - Enacted only after nationwide peoples struggles after the 73rd Constitutional Amendment left out the Scheduled Areas from its ambit, and
   - After the recommendations of Bhuria Committee
3. Contradictions exists between PRIs and PESA – amendment is needed in State Panchayat Raj Act and not in PESA
   - Primarily on structures above the PESA Grama Sabha; Block and District Panchayats of the PRIs
   - In PESA the Grama Sabha is the supreme power
4. Scrutiny and monitoring is called for in TSP fund utilization
   - In Kerala less than 50% of TSP fund is devolved through LSGIs and the rest through Department v of Tribal Welfare
   - TSP fund still is not free of corruption, misappropriation
5. Clear demarcation needed in using the term 'GramaSabha'; PESA Grama Sabha and other several forms of Grama Sabhas exists
   - PESA Grama Sabha is evolved through practices and traditions of tribal communities
   - ven practitioners and bureaucrats are ignorant and confused

6. PESA is getting entangled too much in legal matters
   - Mainly in matters of land alienation and recognition of land rights
   - PESA is the outcome of peoples' struggles, and
   - Peoples' intervention and struggles can strengthen it further

1.3 Proposed Areas for PESA Notification in Kerala

The proposal is to enact PESA in 31 (thirty one) Grama Panchyat/wards and 3 (three) Municipalities of Kerala. These proposed areas are spread in 5 (five) districts; Kannur, Palakkad, Malappuram and Wayanad in North Kerala and 1 (one) district in Central Kerala viz Idukki. Together there are 2445 Ooru (hamlets/settlements) in the proposed areas.

1.4 Tasks Ahead

(i) Comprehensive mapping of tribal inhabited areas by:

a) listing out ST hamlets/habitations in Kerala currently proposed to be notified as Scheduled Area and those which are not currently in the list;

b) compiling data in terms of demographic profile, geographical area (both forest land and revenue) and land use from census and forest survey of India data in order to provide a comprehensive mapping of the area proposed under Scheduled Area and left out ST area;

c) checking whether the proposed area is coterminous (having the same boundaries or extent in space, time, or meaning) with TSP (Tribal Sub Plan) area including MADA (Modified Area Development Approach) and clusters as recommended by various official committees;

d) Examining possibilities of aligning or redrawing so as to form separate Panchayats and even districts, contiguous or nominal or notional as the case may be, to consolidate tribal inhabited areas into compact administrative units.

(ii) To evolve a preliminary draft of the provisions for the amendment to the Kerala Panchayat Raj Act and Kerala Municipalities Act 1994 as amended up to date as required to extend PESA to Kerala pertaining to Gram Sabha and the structures above it by critical examination of :

a) the legal frame of PESA and the State amendments applicable to the states having Scheduled Areas Himachal Pradesh, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Andhra Pradesh, Rajasthan Telengana, Odisha and Gujarat; the Rules notified under the amendments to the concerned amendments to the respective State amendments to the Panchayat Raj Acts, and the amendments made to the concerned State subject laws where these are carried out.

b) the Sixth Schedule provisions in Assam (the North Cachar Hills, the Karbi Anglong Hills and the Bodoland Territorial Autonomous Districts), Meghalaya (the Khasi Hills, Jaintia Hills and GaroHills Autonomous Districts), Mizoram (the Mara, Lai and Chakma AutonomousDistrict Councils), and Tripura (the Tripura Tribal Areas Autonomous District Council)

c) The Rabha Hasing Autonomous Council. Sonowal Kachari Autonomous Council, Mising Autonomous Council, Lalung (Tiwa) Autonomous Council, Deori Autonomous Council and Thengal Kachari Autonomous Council of Assam, and Ladakh Autonomous Hill Development Council, Leh and Ladakh Autonomous Hill Development Council, Kargil of Jammu & Kashmir all of which are constituted under State laws.

d) Other potentially relevant laws such as the Nagaland Tribe, Area, Range and Village Council Act of 1966 that provides for the creation of a tribal council for each tribe, an Area Council for Kohima and Dimapur, a Range Council in the Mokokchung and Kohima Districts and Village Councils for one or more villages in Kohima and Mokokchung, the The *Nagaland Communitisation* of Public Institutions and Services *Act*, *2002* and notifications under with regard to health, education and electricity services.

e) The Scheduled Tribes and Other Traditional Forest Dwellers Act 2006 and Rules as amendein 2012.

f) International instruments as ILO Convention 169, UN Declaration on the Rights or Indigenous Peoples, The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO) etc.

g) The various studies on all the above, particularly the official reports of Ministry of Panchayat Raj, Administrative Reforms Commission, Planning Commission etc, the reports of various Commissions and Committees, other studies on PESA etc. (Annexure I , an indicative list)

(iii) To formulate preliminary draft Rules to the preliminary draft amendment to the *Kerala Panchayat Raj Act* and Kerala Municipalities Act 1994 as amended up to date.

(iv) Development of a format for checking alignment of laws with PESA (Annexure II – sample format)

(v) To propose a mechanism to monitor the progress in the application of PESA in the State.

1.5 Suggestions & Recommendations from the Seminar

1.5.1 Research & Training

1. Ethnographic Study on Customary Rights: to distinguish authentically tribal customs like management of land for deep knowledge in Customary Laws.
2. All trainings to address tribal issues must include the protection of nature, earth and resources of Western Ghats; the human heritage.
3. Draft amendments to conflicting laws, capacity building to department and LSGIs, train and create committed and informed social activists.
4. Imparting awareness among tribals and non-tribals is very significant.

5. Clarity on what a Grama Sabha is and foster the right attitude while training Grama Sabhas
6. While educating Grama Sabha, due importance is called to provide the legal status of the Vth Schedule, ad-hoc positioning of the judiciary, understanding and respect of eco-anthropology and tribal ethos to be focused.
7. Prior to launching of PESA, elaborate training be given to officials of departments at all levels
8. Practical Legal Activism to combat Adivasi land alienation and rights issues with creation of trained para-legals, law colleges and law students, National Legal Services Authority (NALSA) 1995, to provide free legal services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes.
9. Critical assessment of Panchayat Raj Act and PESA to identity conflicting and complimentary aspects to draft changes.
10. Constitute PESA Network of social movements to identify problems and for implementation.

1.5.2 Forest Resources, Protection of Community Rights

1. A common minimum programme for protecting and regenerating natural resources, protection of Adivasi interest, culture and heritage and sustainable development.
2. The proposed PESA should make provisions to give the community members the power to interact with the market and decide on the prices.
3. Document all tribal culture, practices and management systems and enquire the merit of institutionalizing all these historically evolved practices.
4. Conflict between PESA and FRA on bamboo as MFP that community has rights over posed as depriving elephants their food.
5. Shift to RBA Regime (Risk Benefit Analysis), the SEAC (State Expert Appraisal Committee) and EIA on individual project basis for futuristic approach to tackle mining and mineral issues in the country.
6. There is a need to ban Forest Protection Committees from collecting NTFPs.
7. Create systems for value addition of products, branding and distribution network.

1.5.3 PRIs and PESA

1. Legal backing to consider Oorukoottam as the PESA Grama Sabha, all Act or Law enacted for PESA be free from the Panchayat Act but as a separate Adivasi Grama Sabha Act.
2. It is advisable to setup a committee in Kerala to analyze the Grama Sabahs.
3. Define the PESA Grama Sabha in the Kerala context.
4. Safeguard against Panchayats at higher level not to encroach into the power of Grama Sabha.

5. PESA Gram Sabha is not comparable to the Gram Sabha under the State Panchayat Raj Act where the Gram Sabha is the assembly of the people in a Gram Panchayat consisting generally of numerous revenue villages having a number of hamlets whiich is too large to be of any practical functioning unlike the PESA village which is small and compact.
6. Review Kerala Panchayat Act and Municipality Act while discussions on PESA
7. TSP funds not utilized in Travancore region citing absence of tribal communities where as there are tribal families present in Panchayats

1.5.4 Habitats

1. Oouru based mapping in PESA demarcating mapping process
2. Discussions on tribal habitats, rights, culture and overlapping of rules etc need to take the service sector especially tourism sector very seriously in Kerala
3. Need to stop the spread of resorts and tourism projects by using PESA mapping.
4. The problem with defining habitats are made more complex when different agencies try to define habitats on different terms; the PESA, FRA and MoTA.
5. The Rules to the Forest Rights Act provides a detailed and practical way to identify the villages as per the PESA definition of village
6. The ST members of the GS have to define the traditional boundaries with their own language and traditional names and the role of the officials to facilitate the process or conversion of it into a scalable map
7. Verify all existing laws under Article 244, Scheduled Areas, PESA, FRA and also TAC while considering demarcation of habitats

1.5.5 PESA Implementation & Structural Issues

1. The core issue with PESA is conflict of political interest and this is manifested in different ways in tribalareas, how to tackle it?
2. Since the population is very small regional plans may not be feasible but can a family based plan work?
3. The presence of several parallel intuitions and multiple agencies may complicate PESA working, and its implementation
4. A special cadre to be created by the government for recruiting eligible and competent candidates to tri bal related institutions and departments
5. While drafting PESA rules, provisions for recruiting of personnel to Scheduled Tribe Development Department and a recruitment policy be included

6. Create provisions to provide more power to the ITDP Demographic shift in tribal zones, militarization/criminalization of tribal movements, dilution of PESA/Vth Schedule provisions and free trade agreements etc are challenges to tribal community and their regions.
7. In Kerala the government should ensure that all adivasi people get the benefits of PESA. The top down approach in the PESA implementation process should be reversed with bottom up approach.
8. Concern against Governments upgrading PESA areas to Municipalities with clear objective of taking away resources from the region and community rights.
9. A revisit in reservation policy is necessary in the context of reserving certain number of seats for deprived according to their population at micro level among the tribal populations
10. Whether delimitation can be used to demarcate geographical boundaries of PESA Grama
11. Discussion should be made about PESA Section 4 (n) whether it shall end up as 'immunization of PESA Grama Sabha
12. Be watchful about distortion of PESA rules as in Odisha where instead of village as unit for Grama Sabha the state government decided it as a Panchayat
13. Legal compliance against PESA in Odisha; there are 17 such compliances against PESA on key sections 4 (a) to 4(m)(vi) & 4(n)

2

INAUGURAL SESSION

2

INAUGURAL SESSION

2.1 Welcome – Dr. J.B RAJAN, Assistant. Professor KILA

Dr. J B Rajan set the premise for the Two-day National Seminar by briefing the background and by introducing the guests and speakers of the inaugural session.

The difficulties in implementing PESA in Kerala were revealed earlier in February 2016 from the Preliminary One Day Workshop organized by KILA and from discussions with Panchayat Chairpersons. In this context, the experiences of other states are sought from this seminar in order to help Kerala in its thrust towards its application. PESA in Kerala is rooted in the tribal struggles and the pressure exerted by leaders like Sri. Geethanandan and Smt. Janu that led to its introduction in the State.

Dr. P P Balan, Director, KILA has always been enthusiastic in introducing new ventures in local governance and expects to evolve concrete steps for implementation of PESA in Kerala through this seminar. This seminar brings together guests such as Dr. P V Rajagopal of EKTA Parishad, well known for his *Padayatra* highlighting the various problems faced by the tribal population due to inadequate implementation of the different legislations and policies adopted by the Government for their welfare. Sri. SM Vijayanand (IAS) who shall deliver the keynote address is the chief architect of decentralization in Kerala with critical experience in tribal issues in the state. Adv.KK Santhakumari, President District Panchayat, Palakkad and Smt. T Ushakumari, President District Panchayat, Wayanad are both keenly involved with tribal affairs.

2.2 Presidential Address - Dr. P.P. Balan, Director, KILA

Dr. PP Balan, in his presidential address, briefed the decentralization scenario in the state, the role of KILA, the status of PESA and TSP in the state. He set the expectations from the national seminar and anticipated that next steps could be significant in bringing justice to the Tribal people in the state.

Kerala is ahead in decentralization and has a model that other states would like to emulate in aspects such as of the functioning of Panchayati Raj Institutions (PRIs), steps taken for transfer of funds, departments and institutions. With other states participation, this model can still move further and be more effective. While KILA is primarily a training institute, it often intervenes in policymaking issues. The Scheduled Tribes (STs) are economically very backward and the programs are meant to pressurize governments to help decentralization and thereby the poor. In the state, 50 per cent of TSP funds are now transferred to Local governments, while the rest is disbursed through the Tribal Department. The result, however, still remains unsatisfactory. The proposal for PESA in the state involves 31 Grama Panchayats and 3 (three) Municipalities belonging to 5 (five) districts. .

This National Seminar is an intervention, with the objective to implement and smoothen the functioning of PESA and thereby make things more in favour of Tribal People and their lives. In fact, this National Seminar is a follow up from the Preliminary One Day Workshop organized by KILA in February 2016, in the presence of Panchayat Chairpersons and Activists. Implementation of PESA is not easy, as it calls for more discussions with different categories of people to bring more clarity. Role of academic discussions is to make Governments work more efficiently and change the mindset of implementing agencies and bureaucrats.

2.3 Inaugural Address - Dr. P.V. Rajagopal EKTA Parishad

At the outset, Mr. P V Rajagopal, emphasized the role of KILA and its Director is in giving voice to the 'last person in the society'. New initiatives, such as, NRI Panchayats is to provide non-residential Kerala population the space in the Grama Sabha process. There are similar thoughts voicing the concerns of 30 lakh migrant labourers from outside of the State, even though they are not in the State's electoral list. These initiatives highlight the role of KILA to address the concerns of various segments of the people.

When discussing PESA Act in the Kerala context, the notion outside the state is that land reforms have been completed here. Yet Kerala is the land of land struggles - Muthanga, Chengara, Attapadi, and so on. Bonded Labour Act, Land (Ceiling) Act, PESA Act, etc have the strength to usher in radical changes at the bottom level. But this is not always the case. Past experience shows that expected changes are missing mainly because the laws are not interpreted in favour of the poor ('Law can be interpreted in favour and against the poor'). It requires activists and sensitive officials to work together for grassroots level changes. In Madhya Pradesh, there were successful attempts to educate and sensitize Govt. officials because sensitive officials are essential for implementation. In fact, it must be a combination of progressive laws, sensitive officials, and committed activists all working together to provide justice to the poor. Adivasis are a minority in almost all States. They are also divided politically which makes them weak. PESA has the ability to empower them and provide them the right to regain their lost natural resources. Implementation of FRA is also not very satisfactory in Kerala.

KILA attempts to highlight the issues and concerns of PESA and urges the state to listen. National level activism and activists shall take it to the Central Government to accept the state proposal. A three dimensional approach to PESA can be: (1) Mobilization through Struggles and Movements, (2) Advocacy meaning, role of the State to pursue advocacy, and (3) Legal Interventions.

2.4 Keynote Address – Mr. S M Vijayanad IAS, Secretary to Ministry of Panchayati Raj Govt. of India.

The chief architect of decentralization in Kerala, Mr. S M Vijayanand IAS has been involved all along the State's journey with decentralization, particularly planning of tribal programmes. During keynote address, he referred the history of PESA, FRA, and TSP in the State, their limitations and failures in implementation. He remarked that there was a historical delay - 'should have happened 60-65 years ago' - in introducing the Provisions for the Vth Scheduled Area *(Article 244 – Administration of Scheduled Areas and Tribal Areas),* that could have avoided severe loss to the Scheduled Tribes. And their condition should have changed far better. PESA is vested with great powers. Under the provisions applicable to Scheduled Areas, Governors of States have powers to modify existing laws and regulate laws to protect Tribal People. The Union Government has powers to instruct State Governments. The Tribal Advisory Councils, constituted for this purpose are vested with important powers. PESA is vested with immense powers to safeguard the traditional cultural identity and customs of Tribal People. PESA ensures huge powers to Grama Sabha - their customary mode of dispute redressal mechanism, important role to approve development plan (every plan has to be approved for social and economic relations), mandatory consultation on land acquisition, power to enforce prohibition or to regulate sale and consumption of intoxicants, power to manage village markets, power to control over money lenders, power to manage to minor water bodies, etc.

According to him, Tribal Sub Plan (TSP) was introduced (during Vth Five Year Plan 1974-79) with an objective of bringing fundamental changes to the socio-economics of Tribal People. There is real money transfer in TSP. It came into existence even before social audit was introduced. But TSP performance is not satisfactory even in Scheduled Areas. There are issues of land alienation, ignorance of customary laws, and lots of things are yet to be done. Kerala can offer a lot. It has the better decentralization framework supported by State and the human development is also high. Weak Grama Sabha functioning, lack of strong operational processes and procedures, ineffective exercise of regulatory powers, issues of federalism, absence of vibrant customary laws, and complexity of laws are the main issues, Therefore these are to be addressed, he added.

Mr. Vijayanand remarked that there are other challenges that are also Tribal specific in the Kerala context. These include low tribal population, loss of commons, weak political consolidation among tribals, issue of mixed (migrant) populations, co-option and failure of experiments. A major challenge to PESA implementation is that the Tribal population is thinly spread with just two tribal-majority Panchayats in the State. The population is at different levels and presence of inter community variations also make the issue more complex. There is scarcity of common land and its related use. Tribals are unable to exert their interests through their political parties, often there are political conflicts.

While concluding, he has given key areas to focus for future interventions viz. preparedness on the role and representation of Panchayat and departments, conducting of action research, experimentation of

Attappadi model SHG, and access all available resources and rights. Pursue special capacity building for Schedule Tribes, Local Self Governments, Departments and also non-tribal citizens. He added KILA can play major role in this. viz.

1. Coordination: coordinate different departments; forest, environment, etc.
2. Action Research: take up action research – Model Tribal Panchayat as an experiment.
3. SHG Federation: initiate exclusively for STs.
4. Training: to convert Tribal Promoters to be committed persons for social transformation. (see that they are not hooked by political parties).
5. Tribal Sub Plan: to ensure 100 per cent of TSP fund reach to tribal areas.
6. Sensitizing: sensitize non-tribal people to convey that PESA is not a threat to them.
7. Advisory Group: to guide implementation of the PESA Act.

2.5 Felicitations

2.5.1 Adv. KS Santhakumari, President, Palaghat Zilla Panchayat

There are fruitful discussions on Scheduled Tribes happening in the country. This may help to achieve primary needs of the tribal people.

There have been much efforts In Kerala for the past 50 years on all fronts. Need more struggles to bring the tribal people to the forefront. The seminar should share more experience from other parts of the country. There is a need to create a free and common platform for demanding land and forest rights and the development of the tribal people. Wished success, on behalf of the District Panchayat of Palakkad, for fruitful outcome in the seminar.

2.5.2 Mrs. T Ushakumari, President, Wayanad Zilla Panchayat.

Kerala has not opened its eyes to the most backward community - the tribals. The situation of tribals in Wayanad district is worsening. This national seminar is seen as a platform to learn particularly from other statesand from their struggles.

Discussions

Mr. Ashok Choudhary: There are basic governance issues in Scheduled Areas. PESA Act is not supported by allied Rules. In the Kerala context, harmonizing of parallel bodies is required.

Mr. C R Bijoy: On functioning of Gram Sabhas, the common reaction is that the traditional Adivasi Grama Sabha is not active in Kerala. The fact is that there is no reason for it to be active in many areas of life, except in some aspects of their culture, festivals etc. The fact is also that the functioning of the traditional Gram Sabha do exist in some form or other in their memories. When there are reasons for them to activate their Gram Sabha, then it is logical to expect that their Gram Sabhas would become active. At present, generally under Panchayat Raj act, the Gram Sabhas have very little role as it is placed in the lowest rung of the ladder of local governance and it is the elected Panchayat who has powers. Gram Sabha is weak because it is the weakest structure in law. But PESA is centered around the autonomous functioning of Gram Sabha in specific subject matters. Another common reaction is that tribals are an extremely small minority living dispersed thinly across the state; therefore they would be powerless to rule themselves amidst the more powerful non-tribal population. This is not substantiated by facts, even in Kerala. Ever since the mid-1990s, tribal issue has come to the forefront of Kerala's politics, and followed by the 2001 agreement with the Adivasi-Dalit Samara Samithi and on to the successful 'nilpu samaram' struggle last year. These is enough proof to state that their minority status and dispersed population is a hindrance to their political assertion. Bringing tribal habitations under the Scheduled Area is a result of their struggle. Similarly PESA as well as FRA are the result of struggles of tribals, who are a minority (8.6%) at the national level and live dispersed. PESA became a political and legal necessity with the Governors in the states with Scheduled Area not been fluffing the role envisaged under Article 244. However, in recent times it can be seen for instance, that in Maharashtra, institutions of the Governor's office have intervened positively when the State government moved against the interest of tribals. There have also been recent initiatives by the central government in the last few years to educate the Governors (recent meeting of governors of Scheduled Area states in Jaipur) to activate them to fulfill their constitutional role with regard to tribals.

Dr. Abey George: Access and control of natural resources is the basic issue; Tribal lives are centered around natural resources.

Mr. Geethanandan: Customary practices are more felt on marriage, death etc. Every resource right is alienated, except customary rights.

Dr. Amitab Bachan: Several community protocols are not by law, in fact law actually alienates. Nor are Tribals bound by cash- based economies. There is the need to document customs and management practices.

2.5.3 Vote of thanks – Dr. Peter M Raj, Associate Professor, CRC, KILA

Dr. Peter M Raj thanked all the speakers and participants to begin with. He remarked that KILA and its Director proactively takes up issues related to decentralization. Whenever Govt. plans something new, it is taken up by KILA and by the Director. In the presidential address by Dr. P.P. Balan has spelled out KILA's interest in the tribal people, their welfare and possible interventions in operationalizing PESA. Dr. PV Rajagopal in his inaugural address shared experience of working in Madhya Pradesh for PESA implementation and provided the three-dimensional approach to Kerala's attempts. Keynote address by SM Vijayanand has put KILA in the forefront with specific tasks to tackle tribal welfare and effective implementation of laws and schemes. Adv. Santhakumari, President District Panchayat, Palakkad and Smt. T Ushakumari, President District Panchayat, Wayanad both asserted their concerns about tribal people and a fruitful outcome of seminar objectives. Dr. Raj once again thanked one and all and wished all success to the two-day national seminar.

3

TECHNICAL SESSION I

PESA: SHARING EXPERIENCES

3

TECHNICAL SESSION I

Day 1 (29-04-2016) – PESA: SHARING EXPERIENCES

Welcome : Dr. Peter M Raj, Associate Professor, CRC, KILA

Chair : Dr. P P Balan, Director, KILA

(There are five presentations in the session under the broad category titled PESA Sharing Experiences. The five speakers and their experience sharing includes: 1. PESA and Governance – Sri. SC Behar, former Chief Secretary to Govt. of Madhya Pradesh, 2. PESA Mines and Mineral Act – Sri. Ashok Shrimali – Expert, Natural Resources**, 3.** PESA Grass Root Experience on Tribal Rights – Sri. Ashok Chaudhari – Expert Trainer in PESA**, 4.** PESA and FRA and Land Rights – Sri. Sunil – LENDESSA, Hyderabad, and **5.** The Relevance and Urgency for PESA in Kerala- Sri. M Geethanandan, Social Activist, Kerala)

SUMMARY OF PRESENTATIONS

As generally understood, non- implementation of PESA is not due to technical reasons but due to socio political ones. This signifies through the fact that most implementing agencies, institutions and officers are non-tribal with social, economic and cultural dominance to that of the tribal community. From within the tribal peoples there are issues to be sorted out on social, economic and political fronts. More ethnographic studies, amendment of conflicting departmental laws, reorientation of Panchayats and in situ training to departmental officials are concerns to be addressed. **(PESA and Governance).***The need for development Vs. environment debate cannot be more obvious as in the case of mining in the forest regions. Apart from the irrevocable ecological destruction, mining contributes to the devastation of lives of forest dwelling and dependent communities especially the tribal communities - this often appears only in keenly focused debates. Every law and constitutional protection made in their favour after long and hard fought struggles are bypassed with more damaging laws and dilution of existing laws. It is the economically powerful, armed with political high handednesses that have their way. The recent development into tribal areas is of tourism promoted both by Central and State Governments. In spite of Schedule Area Constitutional Provision, PESA, Environmental Protection Act, Wildlife Protection including the Panchayati Raj Act, the customary, traditional and cultural rights of the tribal peoples all over India are at severe risk.* **(PESA Mines and Minerals Act).** *Influence of market forces and the resulting life style changes are key issues to tackle since this influences the education system, the exploitative development model and disregard to the culture and identity of people including the Adivasi communities. There is a growing middle class even among the Adivasis that imbibe these life styles*

that in turn affects the non-consumerist and collective life style of Adivasi communities. To counter this model, a nationwide consensus building for alternative development models is being worked out along with linkages with like minded organizations and movements. Efforts are needed towards a Gandhian way of life and Gram Swaraj principles. PESA in Scheduled Areas may be extended to the whole nation **(PESA and Grassroots Experience on Tribal Rights)**. *Role of legal activism at grassroots level can provide the much needed support to tribal communities to secure their land rights. This activism calls for support of people and institutions at different levels; local youths, the educated youth, law schools and its students and also making use of free legal services from National Legal Authority. The prospect of creating alternative legal systems to strengthen adjudication at the village level are also explored* **(PESA and FRA and Land Rights)** *Exploitation and denial of rights of tribal people has been continuing unabated during colonial as well as post colonial era. Though they have been driven out of their places of habitats and reduced to wage labourers, tribal people have continued to maintain their and customary practices. The significant difference between tribal communities of North Kerala and the South is that while the former are entirely landless, the latter have retained their forest rights. PESA enactment in the Kerala context should do away with all ambiguities between community institutions, their traditional practices against formal institutions, different levels of representations and electoral methods, and also propose as an independent Act.* (**The Relevance and Urgency for PESA in Kerala).**

3.1 PESA and Governance – Mr. S C BEHAR, Former Chief Secretary to Govt. of Madhya Pradesh

To enact PESA, there was political consensus among all parties in the parliament. However this consensus did not translate into ground level implementation of the Act owing to socio-political reasons, not technical ones as often described. Dominant larger groups who are politically, economically and culturally powerful are often in conflict with smaller groups, the tribals. Most government agencies and officials are also not Tribals. On the other hand there are other reasons as well for PESA not gaining acceptability. There is very limited number of social animators to take up the challenge of implementation especially from the tribal communities. Socio-economic disparities and differences in political ideology within the tribal people also are hindrances. Under those circumstances how to manage and implement the PESA Act, is the challenge. There is an urgent need to identify and clear ambiguities in these issues as well. Looking ahead from a governance point of view KILA can take initiative and develop a number of areas:

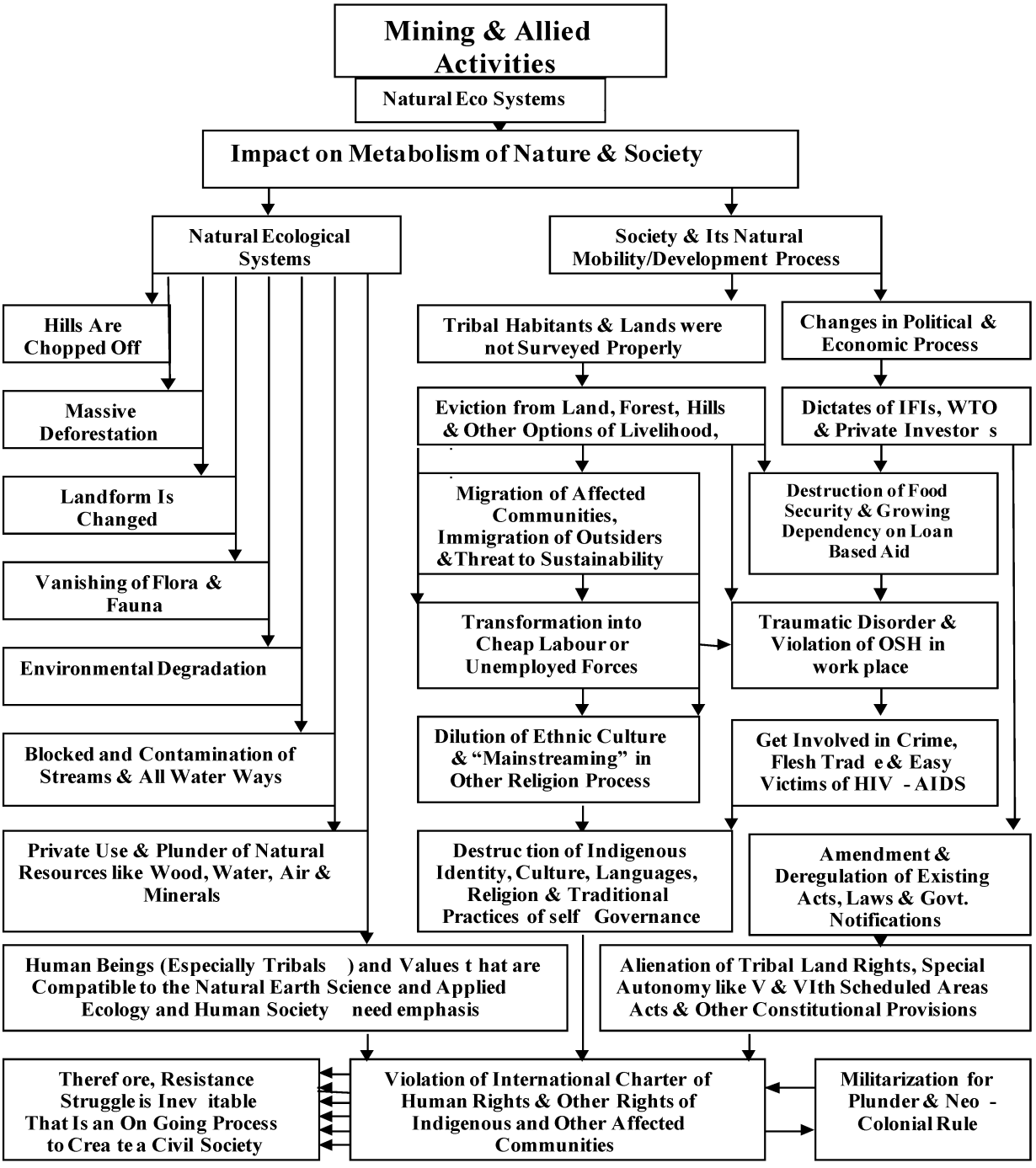
1. **Ethnographic Study on Customary Rights**: to distinguish authentically tribal customs like management of land. The earlier custom was need-based allotment of land. These aspects must be studied and codified since deep knowledge in Customary Laws is essential
2. **Amend Laws**: There are several departmental laws that are conflicting and complex. KILA can draft required changes and amendments to these.

3. **Training**: Train officers of concerned departments for reorientation of the situation in the area. These training must be *in situ* – field-based. This is to develop a new culture of sensitivity and create understanding that tribal people and laws concerning them are not just technical aspects. These trainings should be with long term objectives and more field-work oriented; what could be termed as 'broadcasting approach'.
4. **Reorientation of Panchayats at Higher Level**: this is to verify and monitor the level of implementation on the ground. Pressurize Institutions from within and develop reorientation programmes with more field work and gauge levels of implementation.

The real challenge is who will work on behalf of the tribal communities. There is a need to develop activists out of institutions who can work with tribal people like NGOs. They should have positive pressure from within and ability to work with people and on their behalf. Also identify and provide training to interested people in tribal people and their affairs. Together these two must form a group to implement PESA. If KILA can work this out, it can be a model for other states such as Chhattisgarh and Tripura.

3.2 PESA Mines and Mineral Act – Mr. Ashok Shrimali – Expert, Natural Resources

Discussions on PESA mining and mineral Act can be through an overview of mining industry in the country. The impacts of mining are many; violation of human rights, rapid indiscriminate expansion, sudden end to livelihood options, and total destruction of ecosystems. Mining is always in resource-rich areas and most of the mineral resources are found in the Scheduled areas of our country where large extent of forest resources are still available as well as all the NTFP (Non Timber Forest Produces) and is also the Birth Places (Catchment Area) for many rivers. The problem from mining is manifold as there is total destruction of natural wealth and biodiversity converting the resource dependent communities into wage labourers and has destructive influence on their local culture. In spite of the proactive Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act 2006, Amended Wildlife Protection Act, Hindu Succession Act 2005, number of laws on environmental aspects, and bodies like Green Tribunal, it is the corporate mining companies that steal the advantage. Matters are getting worse as there is a move to dilute the present EIA (Environmental Impact Assessment) procedures and the mining industry is gearing up to splitting of projects so that it will attract less environmental regulations. If futuristic vision prevails in the Government, it should shift to RBA regime (Risk Benefit Analysis) and the SEAC's vision (State Expert Appraisal Committee) has to be large enough and often beyond the specific project and the State, as the scale of upcoming projects have larger implications. Also EIA has to be on individual project basis as each project has its own implications and it has to look at synergistic impacts to the environment as well as to the socio-economic structures.



PESA ensures Gram Sabha the power to regulate mines and minerals. The main focus should be how people can manage District Mineral Foundation – DMF-***(Gazette Notification dated 20th Oct 2015 regarding Mines and Minerals (Contribution to District Mineral Foundation) According to the Rules, new mine lease holders have to pay not exceeding one-third of the royalty to DMF)*** and formulate cooperatives. 26 percent profit is to be shared with the affected community. Minor Forest

Produce can be managed by cooperatives or individuals. Though FRA recognizes community rights of ownership and access to resources, transfer of these to community needs face hindrances and this need to be tackled. A new challenge to PESA and tribal people are that both State and Central Governments introduces tourism in forest and tribal areas that can impact tribal community. In Kothagiri in Tamil Nadu, tribal people are facing problems of tourism. State Rules are required on how to save the tribal community and sustain tribal lives.

Imperatives of Recent Laws and Amendments

Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Rights) Act 2006

- This Act mandates that the Rights have to be determined and due process of extinction of rights must be followed to change the land use.
- The most important is the fact that involuntary relocation becomes illegal and consent of the communities need to be sought.
- The clause finds reflection in the amended WP Act too.

Amendments to the Hindu Succession Act, 2005 The amendments have made women coparceners *(a person who shares equally with others in the inheritance of an undivided estate or in the rights to it)*. This means that every 18 year-old girl should also be treated as an individual family for the dispensation of the compensation and provision of the R&R and benefit sharing arrangements mandated under law.

3.4 PESA Grass Root Experience on Tribal Rights – Mr. Ashok Chaudhari – Expert Trainer in PESA

Adivasis have a unique culture of respecting bio diversity and human values, sustainable community based economic model, technical and practical knowledge on agriculture, medicine and handicrafts. Current development model however does not respect this and violates laws enacted in the interest of Adivasis and the education model risks their cultural identity and talents. A return to the Gandhian Model of Development is called for to combat the challenges of modern development that is centered in over-exploitation of natural resources. Adivasi EktaParishad participates in different forums to try and develop nationwide consensus regarding alternative development model. It also links with different organizations and networks and like minded organizations for future actions against issues that emerged during new economic policies – issues such as threat to Adivasi life and their survival, influence of mass media, television, internet and the 'expansion of market forces accompanied by the growing middle class among

Adivasi communities that are adversely affecting the simple, non-consumerist and collective life styles of Adivasi communities and their culture'. A road map to preserve nature, animals and humans could be to strengthen the educational system among the people that respect Adivasi cultural identity and empowerment. There is need to strengthen legal system to protect and preserve nature and humans and all other live forms. Strengthening co-ordination between Adivasi movements, between Government and non-Government institutions and communities to evolve a common agenda is to be seriously thought of. There should be efforts to ensure the freedom of Adivasi community to use resources, one of the corner stone of PESA. Expectations can be summed up as a common minimum programme for protecting and regenerating natural resources, protection of Adivasi interest, culture and heritage, programme for sustainable development and reducing the miseries of common man including that of the Adivasi.

3.5 PESA , FRA and Land Rights – Mr. Sunilkumar M – LENDESSA, Hyderabad

Legal experiments and experience of working in Scheduled Areas and on land rights are eye opening. Andhra has the Tribal Land Law 1959 ***(Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959)*** related to the protection and safeguarding of lands belonging to tribals living in Scheduled areas. There were 76,000 (seventy six thousand) land alienation cases in Scheduled Areas of which judgments were passed for less than 10 per cent only. Of this 36 cases had gone in favour of non- tribals. But in cases that were in favour of tribals, the land they had won was not transferred to them. The law on the other hand stipulates that no tribal people can be alienated from their settlements and natural resources, and only tribals can transfer land to tribals. It was such a situation that prompted to ask the questions as what is to be done.

In the Kerala context it is significant to share the experiences, to look at this situation and the multi-pronged interventions to tackle this issue. To begin with, basic training to understand the ground reality was provided to local youths. This included as to how to read land records, collect data from ground, identify issues like land alienation and other land problems such as non-updated land records, records without ownership and names etc. The report that the groups provided noted 76 types of land issues. This was followed by creation of para-legals, trained them in law, empowerment and other related issues. The outcome was that some of the cases were resolved through their interventions to emphasise the fact that 'knowledge is power'. The next step was to seek free legal help to the affected community. For this, joined hands with law colleges, where law students helped to scrutinize records and to file appeals in lower and intermediate courts.

FRA provided 173 thousand tribal communities with land rights. Social activists were trained to survey the land. These titles were won because of interventions of social activities. National Legal Services Act ***(The National Legal Services Authority (NALSA) 1995, under Legal Services Authorities Act, 1987; to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes***) to provide free legal support to the poor can be taken up to make

this legal aid work in Kerala. Tribals need a support system that combines legal action with social actions. For PESA to work, Grama Sabha has an important role to play. Alternative legal systems need to be generated to strengthen adjudication system at the village level. Even the Supreme Court has asked to adjudicate cases outside of the courts.

3.6 The Relevance and Urgency for PESA in Kerala - Mr. M. Geethanandan – Social Activist, Kerala

Unlike in other states in the country, tribal displacement and loss of autonomy in Kerala is different. In spite of the caste system in Kerala as early as 9th century, tribal community continued to live in forests depending on forest produces. During the 18th century the situation changed drastically with colonial invasion and clearing of forests for plantations accompanied by colonial forest laws. Tribals were displaced. Post colonial period did not ease this but continued with colonial laws and further displacement for hydel projects and large scale plantations. Discussions on tribal issues in Kerala must take note the visible North/ South dichotomy among the tribal population, the most visible being about possession of land and forest rights. Tribals of North Kerala are totally landless (keeping the fact that in Attappady a few do possess land), have lost their forest rights and are wage labourers; while their Southern counterparts could retain their forest rights. Displacement had led to disappearance of traditional system of resource management, but customary practices in relation to birth, marriage and death and other ritualistic practices are maintained. The proposal for PESA in Kerala is restricted to proposed Scheduled Areas of 2148 habitations of North Kerala. The tribal population in Kerala is 4, 25,208 (Socio-Economic Status of Tribals in Kerala, 2013) and the number of Tribal habitations 5762. ***(Kerala population is 3.34 crores, Census 2011)***. Deliberations to empower the tribal community to regain their alienated rights, land and resources through PESA must begin with recognition of Oorukoottam as the Grama Sabha, irrespective of their ownership of land or control over resources. The three tier system – Grama, Block and District of the Panchayat Raj whether the upper tiers shall usurp the powers of the Grama Sabha need serious rethinking ('should abandon the three tier system'). The electoral system relooked into as not to encroach and bypass the traditional institutions and practice of consensus methods among the tribal communities. The scope of clustering Ooru that limits only to the tribal habitats also should be considered. And importantly, all Act or Law enacted for PESA be free from the Panchayat Act but as a separate Adivasi Grama Sabha Act. These and similar demands (as below) must be considered in the context of PESA discussions in Kerala.

Basic Features of Governance to be Considered in the Kerala Context

1. In accordance with the sprit and definition of PESA, all the Orukoottoms, irrespective of their ownership of land/control over resource, are to be recognized as their (*Tribal*) Grama Sabha.

2. Any Act or Law that is formulated for the purpose of PESA in Keralais to be considered as Adivasi Grama Sabha Act and not in the form of Panchayat Act.

3. The role and responsibility of Grama Sabha relating to PESA in Kerala should be so construed that the community in the form of Grama Sabha remains central in the Scheme of Governance at the village level. Any form of Governance at the Panchayat or apex level should play only supportive role.

4. If the three-tier system in the Panchayat Raj is considered, powers vested with the "Grama Sabha" should not be transferred to other Panchayats (like Block & District).

5. The Traditional system should not be counterpoised by the elected system. The representatives of the traditional institutions may be given space in the elected system. The Tribal Advisory Councils constituted under the Vth Schedule be recognized, giving representations to the elected representatives from Vth Schedule Area and also giving representation for the Traditional institutions/leaders.

6. Generally, the governance in an "Orukoottom" is based on consensus and the traditional system. When electoral system is introduced in the PESA Grama Sabha, there is the scope of dividing the Grama Sabha on political lines. Hence due care should be taken by the Legislature not to intrude in the functioning of Grama Sabha.

7. Must bear in mind the peculiar situation in Kerala where majority of the tribals (especially in North Kerala) are pushed to misery having lost their rights over forests/natural resources/and access to Tribal sub plan fund. Hence the underlining approach should be to pave the way for access of natural resources/forest resources and constitutional rights like budgetary TSP funds etc. Amendments of laws relating to all sectors are to be carried in accordance with this principle.

8. The Scheduled Tribe and Other Forest Dwellers (Rights Recognition) Act 2006 had adopted the Grama Sabha defined in the PESA Act for the forest governance. Hence all the institutions related with Forest Rights are to be brought under the purview of PESA Grama Sabha and necessary provisions and rules are to be incorporated in PESA.

9. The present devolution of funds for the Tribal Sub Plan is not carried out in accordance with PESA. The whole purpose of TSP has failed. The approach of TSP is to be redefined in accordance with PESA and the Forest Rights Act.

10. The System of Tribal Administration including the ITDP area, has degenerated or is not in conformity with the Welfare of Tribals. The entire system should be re-structured in accordance with the spirit and letters of PESA.

3.7 Key Suggestions & Recommendations

1. Ethnographic Study on Customary Rights: to distinguish authentically tribal customs like management of land for deep knowledge in Customary Laws.
2. Shift to RBA (Risk Benefit Analysis) Regime, the SEAC (State Expert Appraisal Committee) and EIA (Environment Input Assesment) on individual project basis for futuristic approach to tackle mining and mineral issues in the country.
3. A common minimum programme for protecting and regenerating natural resources, protection of Adivasi interest, culture and heritage and sustainable development.
4. Practical Legal Activism to combat Adivasi land alienation and rights issues with creation of trained para-legals, law colleges and law students, National Legal Services Authority (NALSA) 1995, to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes.
5. Legal backing to consider Oorukoottam as the PESA Grama Sabha, all Act or Law enacted for PESA be free from the Panchayat Act but as a separate Adivasi Grama Sabha Act.
6. KILA to draft amendments to conflicting laws, capacity building to department and LSGIs, train committed and informed social activists.

4

TECHNICAL SESSION II

ETHNOGRAPHIC PROFILE OF THE SCHEDULED TRIBES IN KERALA

4

Technical Session Session II: Ethnographic Profile of the Scheduled Tribes in Kerala

Chair: Dr Abey George, TISS

Presentation: Mr.V K Mohankumar, Extension Faculty, KILA

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.

Summary of Presentation

The intensity of tribal issues in North Kerala especially in Wayanad has no parallel. The region has tribals belonging to earlier bonded labourers, forest dwellers and farmers including PVTGs. Pro-active laws and rights won through agitations – some violent – fail to deliver at the level of implementation. Resettlement and rehabilitation schemes are unsuccessful. Promises of land rights, once agreed, need repeat agitations to reiterate and to honour them. In spite of pre and post independence laws, the tribal people in Wayanad continue to be landless, languish as migrant wage labourers, as sexually exploited and alcoholics. There are attitudinal issues; antagonistic press, politicians and intelligentsia. At the most it is philanthropic concerns. Can PESA deliver them justice?

Introduction from the Chair

The core issue with PESA is conflict of political interest and this is manifested in different ways in Attapady and Wayanad. There are conflicts over the governance systems and that needs careful thought into what kind of system the tribals are comfortable with. There are issues of non recognition of community leadership as is happening in Attapady. Attapady has tribal leaders, but the Government sees no value in them. In implementing PESA the conflict is between the tribals and the non-tribals. PESA has the ability

to work for absolutely landless people. Tribals have their customs and conflict resolution mechanisms that need recognition. All this calls for detailed ethnographic profiling of the Scheduled Tribes in the State.

4.1 Ethnographic Profile of the Scheduled Tribes in Kerala - Mr. VK Mohankumar,

The scheduled tribes of Wayanad are stratified into three major groups; bonded labourers, forest dwellers and farmers. Paniyan and Adiyan are bonded labourers of which Paniyan are numerically the largest. Forest dwellers are four types; traditional semi-nomadic groups Cholanaikan, Shifting cultivators Kurumbar, other forest dwellers Kattunaikan and Muthuvan. Of these, the former three are PVTGs. ***(PVTGs-Particularly Vulnerable Tribal Groups (Earlier called as 'Primitive tribal group', PVTGs have: Pre-agricultural practices, Hunting and gathering, Zero or negative population growth, relatively low level literacy when compared to other tribal groups***). Farmers are Irular, Mudugar, Kuruman, Thachandan Moopan and Wayanad Kadar and the joint family farmers Kurichiyan. Tribal history is also intermingled with social reforms, with legal and governance regimes in this region. In 1854 slavery system was abolished in Malabar which the landlords of Wayanad opposed, as it would destroy the agricultural base, they argued. Bonded labour system was abolished in 1976 that led to the rehabilitation of bonded labourers to the Sugandhagiri Cardamom Project. Tribal Sub Plan (TSP) was introduced in 1975, decentralization in 1996 ***(Introduction of a Special Budget Document for local government allocations and Launching of People's Plan Campaign for decentralized planning and announcement of earmarking of about 35% plan resources to local governments),*** TRDM ***(Tribal Resettlement and Development Mission)*** in 2001, Oorukoottom in 2003 and Forest Rights Act (FRA) in 2006. All these remaining, the core issue of tribal peoples, denial of right to land continued, and hence the community took to direct protests. In 2001, tribal agitation by raising huts before the State secretariat was launched by the Adivasi Gothra Mahasabha (AGM). ***(In fact, TRDM was the result of this agitation and the agreement between the then A.K. Antony Government and the AGM)***. In 2015 the agitation was revived as *Nilpusamaram* (agitation by standing), wherein among other demands, one central demand was implementation of PESA in the State. ***(The 162 day-long 'nilpusamaram' agitation by the Adivasi GothramMahaSabha in front of the Kerala Secretariat was called off after the state government decided to implement PESA).*** The status of the tribal peoples however continues unchanged: majority are landless, with very low human resource development, with reduced number of employment days resulting in migration to the neighboring state of Karnataka, their plan funds being exploited and becoming victims of sexual exploitation and alcoholism. It would require a national seminar to learn the rehabilitation issues of tribal people so far. There are 26 Panchayats to be under PESA in Wayand. Whether PESA can break the chains of ignorance, of procedures and of psychological alienation and so on are yet to be seen.

Discussions

SC Behar: The situation is very disturbing and the question is what can be done. Can a family-based plan work? A regional approach will not work since the tribal population numerically small.

Jose Chathukulam: (1) Can PESA address the disadvantaged community? They are politically and numerically weak. There is anti-tribal debate taking place in private – political parties, press, intelligentsia etc are against the community (2) Majority of Panchayats in the Travancore region do not utilize TSP funds citing reasons as lack of tribal members. But in reality there are tribals living in these Panchayats.

Chair: All tribal families are documented and there are persons to shoulder the issues but the question is how to challenge the politically motivated. There is concern about tribals in the Kerala society, but they are philanthropic concerns. In reality, the approach is such that, the more tribal people in Panchayats, it is antagonistic since they may ask questions. On the other hand, the lesser the tribal community more the concerns that the Panchayat has.

POINTS TO PONDER

1. The core issue with PESA is conflict of political interest and this is manifested in different ways in tribal areas, how to tackle it?
2. Since the population is very small regional plans may not be feasible but can a family based plan work?
3. TSP funds not utilized in Travancore region citing absence of tribal communities, where as there are tribal families present in Panchayats.

5

TECHNICAL SESSION III -

PART 1 :

RESOURCE MANAGEMENT FOR SUSTAINABLE DEVELOPMENT

5

Technical Session III – Part 1

Resource Management for Sustainable Development

The Session Resource Management and Sustainable Development is divided into three sub-themes (Parts); Natural Resources, Ownership of Minor Forest Produces and Tribal Sub Plan (TSP). Each Part has three discussants each; Part I: Sri. Sreeram Koyyan, Sri. Bhirendra (Jharkhand) and Smt. Surekha Dalwi (Maharashtra); Part II: Sri. Ravi Pragadda (Andhra Pradesh), Sri. P Hareendran and Smt. PV Mini; Part III: Sri. M Geethanandan, Sri EG Joseph and Sri. Gyanendra Sashtri (Chattisgarh). Of this Smt. Surekha Dalwi (Maharashtra), Sri. Ravi Pragadda (Andhra Pradesh) could not attend the Seminar and in the absence of the Chair Dr. Pukhazanthi, Director ST Development, Kerala (Sub-theme - Tribal Sub Plan), Discussant M Geethanandan took over as the Chair of the session.

Sub Theme - I Natural Resources

Chair: Mr. C.R Bijoy

Discussants: Mr. Sreeraman Koyyon & Mr. Biredra Kumar (Jharkhand)

Natural Resources

The Premise

- 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.

Summary of Part 1

There is a double stand about everything related to the tribals in the country; be it about the PESA that is rooted in peoples' struggles but propagated as gift of the parliament, pro-people laws

counter poised with anti people laws, empowering the tribal people but not the ignorant bureaucracy, resource covered by PESA is in its entirety and not just minor resources and the majority population living unsustainably while the tribal people are insisted to be sustainable ***(Chair)****. All discussions related to Tribal people are rooted in the fundamentals of landlessness and denial of access to resources. Tribals are subject to land grabbing even when they possess land as happened in Attappady. The second is the attitudinal problems of non-adivasi and the mainstream thinking towards adivasis - that they can survive by aid and funds that they are violent, that they are marginalized but are incapable of handling power. Exploitation by forest officials, middlemen, politicians and priority given to tourism over tribal needs take place even today. Whether laws are capable of changing people's attitudes towards tribals, needs serious deliberations (****Sreeraman Koyyan).*** *Collective thinking is the characteristic of tribal people and they are aware of subjects around them - have traditional knowledge about resources, their harvest and use, geographical boundaries and agricultural practices. PESA and traditional resource management could work together like the government and Jharkhand Van Adhikaar Manj (JVAM) has come together for PESA implementation, the only such experiment in the country. The bureaucracy however is reluctant on it as they feel it can end up empowering the Maoists. Looking ahead to PESA implementation in Kerala, the Panchayat Raj Act and PESA could be compared for agreements and disagreements between the two to arrive at a favorable implementation of PESA (****Birendra Kumar – Jharkhand).***

Introduction from the Chair

PESA is historically the outcome of struggles and not as romanticized as a gift by the governments. The 73rd Amendment [Constitution (73rd Amendment) Act, 1992] does not apply to the V and VI Scheduled Areas of Article 244 besides the States of Nagaland, Meghalaya, Mizoram, the Hill Areas of Manipur, and the hill areas of the District of Darjeeling in West Bengal for which Darjeeling Gorkha Hill Council exists. The Parliament was to enact laws to extend Panchayat Raj to the Scheduled Areas. Similarly the Scheduled Areas were exempted in the 74th Amendment [The Constitution (Seventy Fourth Amendment) Act, 1992] for the municipal areas with the requirement that Parliament should make suitable law to extend the amendment to the Scheduled Areas. In 1993, Adivasi organizations, mainly from central Indian tribal tract and also the southern region came together to create the National Front for Tribal Self-Rule with late Dr. B.D Sharma (IAS Rtd), former Commissioner of the National Commission for SC/ST, as its prime inspiration. A national struggle was launched that gave forth the frame of self-governance through participatory governance based on Adivasi traditions. Following the recommendation of Dilip Singh Bhuiria Committee in which Dr. B.D Sharma was also a member, PESA was enacted in 1996. Interestingly the PESA frame got further extended and elaborated through Forest Rights Act 2006, again a legislation emerging from forest dwellers (primarily Adivasis) struggle through its national coalition Campaign for

Survival and Dignity that emerged in 2002 as a response to widespread illegal eviction from the forest resulting in struggle with about 150 people being killed in the struggle.

The reality is that it is the same Parliament that enacts a pro-poor legislation also enacts an anti-poor legislation at the same time. An example is that the Forest Rights Act was enacted in 2006, the same year when SEZ was enacted. **[Special Economic Zones (SEZs) Policy was announced in April 2000. The Special Economic Zones Act was passed by the Government of India in May 2005. The bill came into effect on 10 February 2006].** The government seems to be doing its duty perfectly; when resource rights are demanded they pass a bill, when resource-grab is demanded they pass a bill for that too. The same parliament and the same members are involved in it. The often talked about Adivasi empowerment needs clarification too. When PESA has emerged from them, their practices and rights, where does the need to make them aware arise? The ignorant are the officials and bureaucrats, and of course, the mainstream. About resource management in PESA, the discussions should be about common resources and the focus should be on geographical jurisdiction of the Grama Sabha and not about the number of people. Resource also means resource in the specified landscape and natural resource under PESA is not about minor resources as it is often made to believe. Tribals are called ecological people. PESA law ensures traditional management of common resources and prevention of land alienation by the Gram Sabhas. In resource management for sustainable development, why are only the tribals targeted and insisted to live sustainably, while the majority of populations are not? Sustainable development is possible through a democratic decision making process of resource use that fulfills the greatest good of all with equity and justice being central to the decision making.

Discussant 1: Mr. Sreeraman Koyyan

The foremost issue tribal people face is landlessness and that is their genuine issue. To address their problem therefore, we need to take this fact into account and all problem solving approaches must start from that level. It is also a fact that tribal people survive on natural resources. So denying them access to resources is an equally important problem. Land, rightfully belonging to Adivasi people is being taken away like what happened in Attapadi. Land grabbing in Attappadi was based on the hearsay that there is possibility of gold deposits in the area. But tribals were not given substitute land. Among the non-tribals, there is open declaration of disinterest in Adivasis being in power. The accepted notion is that they can enjoy benefits through funds but not wield power. It is doubtful whether these attitudinal issues will change with PESA and FRA. Vanavakasa Niyamam- FRA - prevents tribal people from social-use of forest. Tribals are subject to exploitation at different levels; forest officials exploit them and there are middlemen exploiting especially in marketing medicinal plants that tribal people collect from forest. There is also commercialization of medical techniques and their traditional knowledge. In the Aralam Farm (***the largest tribal rehabilitation project under the TRDM 2011)*** the official apathy is felt as tourists get priority over tribal people. Water for the artificial lake for tourism activities are in abundance, while the tribal

people live in acute water shortage. There is an attitude to paint tribes as extremists which are a frame of mind created by the society that tribals are violent people. The mainstream attitude to Adivasis is also as inconsequential people. They are treated as marginalized people. Political parties approach Adivasi only for getting into power. There are so many issues. KILA must take initiative to impart awareness among tribals and non-tribals.

Discussant 2: Mr. Birendra Kumar – (Jharkhand)

Tribal people are soft-spoken. So people think tribals are ignorant about other things, but this is not true. The fact is that tribals think collectively; for them it is not 'I' but 'WE'. For them society and social is the essence of life. Tribals have a great culture which is their own culture and traditional methods. They are aware about resources, cultivation, and sustainability for they are eco system people and live close to nature. Earlier they had oral laws about area and boundaries for resource exploitation and different agriculture use. PESA encompasses all resources and PESA and traditional resource management can work together. There are Community Forest Rights under FRA and V*an Palan Samithy* – Forest Management Committee. Community rights and community forest rights are not one and the same. In 1996 when PESA was passed in the parliament, Jharkhand did not make it because Jharkhand did not have a Panchayat. There are no rules to operationalize PESA even now. The present Jharkhand's area in the erstwhile Bihar was remote and therefore community rights and systems are still strong. Jharkhand has a long history of struggles for community rights. Bureaucracy is against PESA since they feel it will empower the Maoists. Jharkhand Government being very weak entered into an agreement to implement PESA with Jharkhand Van Adhikaar Manj (JVAM). Jharkhand is the only state that has come up with such an agreement in the entire country. In the Kerala context, Panchayat Raj Act may need to change its Rules so that PESA can be implemented better. In fact we should look at Panchayat Raj Act and PESA together, consider the good in each and make necessary changes. That could be a suggestion. Kerala can also consider setting up a PESA Network of social movements to identify problems and for implementation.

KEY SUGGESTIONS & RECOMMENDATIONS

1. Imparting awareness among tribals and non-tribals is very significant – KILA to be entrusted with this.
2. Critical assessment of Panchayat Raj Act and PESA to identity conflicting and complimentary aspects to draft changes
3. Constitute PESA Network of social movements to identify problems and for implementation.

TECHNICAL SESSION III -

PART 2 :

OWNERSHIP OF MINOR FOREST PRODUCES

Technical Session III - Part 2 :
Ownership of Minor Forest Produces

Sub-Theme - II Ownership of Minor Forest Produces

Chair – Dr. Amitab Bachan, Associate Professor, MES College, Kerala

Discussants: Mr. P Hareendran (Kerala) & Mrs. P V Mini (Kerala)

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.

Summary of Part 2

Contradiction exists between Tribal and Non-tribal understanding of ownership and procumbent of MFPs. What are the tribal institutions, its structure and philosophy must be explored. The type of colonial forest use to the modern and its economic routes should be traced. FRA has tribal potential statutory provisions but the presence of parallel organizations, their jurisdictions and working is complicating the implementation ***(Chair).*** *Marginalization of tribal communities is mainly because they have no control over resources and it is a well-accepted fact that a degree of access to control over resource is always connected with the well-being of people. Exploitation by several systemic, social factors and agencies cause their marginalization. PESA, FRA and Provisions of Scheduled Areas have positive elements for betterment of the tribal situation. Their enactment and implementation should have clear provisions to do away with the ills that tribal people face today.by providing PESA Grama Sabha greater role in forest resource management, value addition, pricing and marketing of MFPs, welfare measures or MFPs workers and to attract the community youth for social development.* ***(P. Hareendran).*** *Tribal communities relying on NTFP can have*

*better returns by streamlining current systems. The present system lacks systematic collection, competitive pricing and marketing. By revamping the functions of the Tribal Cooperative Society, new methods to collection centers, personnel, value addition and marketing can be organized. Tribal cooperatives can also make arrangements for supply of household provisions etc in remote settlements. The State Government has a role to play by introducing insurance and welfare mechanisms. Collection practices and certification can also be introduced (**PV Mini).***

Introduction from the Chair

To understand the ownership of minor forest produces the theoretical framework of local governance and rights of tribal people calls for deep discussion. Tribal people and the non-tribals hold different philosophy on rights such as to ownership, collection and procurement over Minor Forest Produce (MFP). The type of institutions, the structure and politics of such institutions, the role they have played historically in the history of MFPs in the country need considerations. Also the earlier colonial exploitation of timber and forest products to the present coal and mineral exploitation and its economic routes from capitalist to neo liberal economies in the history of Kerala in the realm of MFPs are to be traced. FRA provides better tools to own MFP because there are statutory provisions for community rights, rights over MFPs and management of forest and wildlife in the traditional resource area. But the problem in Kerala is the presence of several parallel intuitions and multiple agencies ('working of many illegal parallel institutions') that denies PESA working complicates it and its implementation. Eco Development Committees (EDC), SHGs etc. are some of this. Also no amendments have been made to existing legislations, both Central and State, after the PESA enactment.

Discussant 1: Mr. P Hareendran (Kerala)

Control over resource is significant because a degree of access to control over resource is always connected with well being of people and this is especially true for forest dependent communities, the Tribal people. Tribals are in marginalized condition because their control over resource is minimal and they are subject to exploitation and marginalization. Their exploiters come in different forms like the main stream mentality, government systems, hegemonic relations that exists in public spaces and historical inequality and through its projects of global political economy. Right based approach is the basic tenet of FRA and of the proposed PESA. Proposal for implementation of PESA, Scheduled Areas as well the enactment of FRA provide a positive signal for scheduled tribe development. 30 percent of the tribal population lives in reserved forests and 40 percent on the fringes, primarily depending on forest resources. These 70 percent will benefit from these and the discussion on right to forest resources has much significance. Grama Sabha defined in PESA should be given a major role in management of forest resources. The marketing of MFPs are by different agencies like Girijan co-operative society, Vana Samrakshana Samiti and also there are local vendors. Prices and the market are not in the hands of the community. The proposed PESA

should make provisions to give the community members the power to interact with the market and decide on the prices. Value addition of products, branding and distribution network like the 'Gandhigram' can be thought of. Kerala has several welfare schemes for workers. Community members engaged in MFP industry would also be provided with welfare measures. Attempts should be made to develop space for traditional medicinal practices using MFPs. Attract the youth of this community in MFP related industries and social development.

Discussant 2: Mrs. P V Mini (Kerala)

Tribal people face several issues with the current system of Non Timber Forest Produces (NTFPs). They are mainly concerning storage, marketing and pricing. Other issues are related to functions and limitations of Tribal Co-operative Societies. Apart from damage to collected products, especially the medicinal products due to inadequate storage facilities, the tribal people are forced to sell their products at lower prices. No facilities are in place to market products at competitive prices and options are lacking for demand based pricing and selling. Value addition to products does not exist. There is great scope for processing, honey, herbs etc. combining traditional knowledge with modern technology. NTFP collection is banned from wild life areas at the collection level. There is a need to ban Forest Protection Committees from collecting NTFPs. Government must provide insurance and welfare funds to those engaged in NTFP collection. Revamping of Tribal Cooperative Societies is required so as to ensure more systematic and democratic modes of functions. Fixed family member based collection centers, selection of members based on special duties and responsibilities, issue of NTFP collection cards, seasonal price fixing mechanisms for products, bonus payments to members and mechanisms to ensure sustainable collection practices and scheme for certification etc are prime activities that the cooperatives can initiate. Cooperatives can also supply ration and grocery to the communities living in remote settlements. The prospect of these could be explored together with all stakeholders in the spirit of PESA.

Discussions

Mr. C R Bijoy: Grama Sabha is a self created body and it is the supreme body that created all other structures. While other structures are collapsing, the Grama Sabha is now reestablishing its role. Both PESA and FRA recognize the Gram Sabha as the statutory authority. PESA confers ownership rights of minor forest produce while FRA goes beyond to extend the Gram Sabhas control over all forest land that the community accessed for various use, with the power to protect, use and manage the forests.

Dr. Jos Chathukulam: Gram Sabha in Kerala is highly confusing; it is artificially created and needs demystification.

Mr. Ashok Choudhari: Our state has to recognize and interpret PESA in its spirit as a starting point to counter international forces that are looting resources.

Chair: Failure of the PRI is because it is artificially created institution unlike the self-evolved Grama Sabha of the tribal communities.

KEY RECOMMENDATIONS & SUGGESTIONS

1. The presence of several parallel intuitions and multiple agencies may complicate PESA working, and its implementation
2. The proposed PESA should make provisions to give the community members the power to interact with the market and decide on the prices.
3. Create systems for value addition of products, branding and distribution network.
4. There is a need to ban Forest Protection Committees from collecting NTFPs.

TECHNICAL SESSION - III

PART 3 :

TRIBAL SUB PLAN (TSP)

Technical Session - III - Part 3 :

Tribal Sub Plan (TSP)

Sub-Theme - III Tribal Sub Plan (TSP)

Chair Mr. M Geethanandan, Social Activity, Kerala.

Discussants: Mr. E G Joseph (Kerala) & Mr. Gyanandhar Sashtri (Chhattisgarh)

Tribal Sub Plan (TSP)

- The Grama Sabha 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, and 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.

Summary of Part 3

TSP continues to function in the absence of appropriate evaluation and monitoring mechanisms in Kerala. The three-tier system under the Panchayat Raj had bifurcated the TSP fund between them and the success of this arrangement calls for evaluation ***(Chair).*** *Tribal community and their plight continue irrespective of creating different systems and flow of funds. The situation did not change much even after the involvement of LSGIs with 1/3rd of funds handled by it. Implementation of PESA is seen as a workable option provided special efforts are made in recruitment of officials and special training provided to officers at all levels (****E G Joseph).*** *The political opposition to PESA is because it empowers the tribal people with knowledge and power. It is evident from facts that no governments put any efforts to popularize PESA. Corruptions of funds including of TSP funds and surpassing of Grama Sabha decisions in favour of big industries are common. The move to implement PESA in Kerala is welcome as it can make traditional Panchayats more powerful (****Gyanandhar Sashtri).***

Introduction from the Chair

Concept of TSP (Tribal Sub Plan) was launched in 1970-74 period during the 5thFive Year Plan (FYP) under the Indira Gandhi Government. Until then there was no concrete plan for STs. Government was compelled to introduce this because of peoples' struggles. In Kerala only one (1) percent of funds were utilized for SC and ST that lead to the launch of TSP during 5th FYP. From 6th to 10th FYPs, situation in Kerala was such that the whole program was controlled by the bureaucracy with only one monitoring cell. After the introduction of the Panchayat three-tier system, the TSP was 'scattered' between the three tiers. There is no democratic platform as far as district and block Panchayat is concerned and lacks evaluation mechanisms. TSP under the three-tier governance system needs evaluation to assess its success.

> *[——] shows that the fund allotted to Wayanad (district panchayat) under Tribal Sub -Plan for 2011-12 alone was for a total sum of Rs.7,11,00000/- (Rupees Seven crores and eleven lakhs only) which is three times higher when compared to the districts of Idukki (Rs. 2,70,74,000/-) and Palakkad.(Rs. 2,15,20000)*
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> *-The Report of the fourth Finance Commission, Government of Kerala, Thiruvananthapuram, (Jan., 2011)*

Discussant 1: Mr. E G Joseph (Kerala)

Kerala Government intervention in tribal welfare begins with introduction of the minister with Harijan Welfare portfolio. This was followed with formation of Directorate of Harijan Welfare that had both the SC and ST community under it. Directorate of Tribal Welfare was formed as per the guidelines of the Central government after it introduced TSP during the IV FYP. ITDPs for tribal-concentrated forest areas and Tribal Development Offices in dispersed tribal areas was the arrangement with field offices called Tribal Extension Offices. Tribal Extension Workers from tribal communities were appointed to support the Tribal Extension Offices. This was the arrangement in the state till the end of VIIIth FYP. The next phase was when the government introduced decentralization of powers to the Local Self Government Institutions (LSGIs) with funds and functionaries during the 9th FYP. 2/3rd of TSP funds were devolved to LSGIs with utilization guidelines while the rest of fund utilization continues with the directorate. All these have not changed the woes of tribal communities. The main reason is that persons with no background on tribal lives are recruited to the TSP and irrespective of numerous training by KILA; KIRTADS & IMG there is little change in their mindset. The fact that the tribal population is less than two (2) percent of the state population is also another fact to reckon with.

History of TSP in Kerala

- Kerala State formation – 1956
- First Elected Ministry -1957
- Minister for Harijan welfare introduced
- Directorate of Harijan Welfare formed for both Harijan (Scheduled Caste) & Girijan (Scheduled Tribe) District & Taluk level offices
- This system prevailed till the end of IVth FYP - 1974
- TSP in Kerala launched during Vth FYP - 1974-79
- Directorate of Tribal Welfare formed – 1975
- TSP fund split between LSGIs & DTW 9th FYP -1997-2002
- This system prevails

Suggestions:

1. PESA is a central act with the advantage that the bureaucracy must work under the Grama Sabha and its decisions. Therefore prior to launching PESA, elaborate training be given to officials of departments at all levels
2. Only committed and qualified officers be specially recruited for tribal development. For this, a special cadre to be created by the government for recruiting eligible and competent persons.
3. While drafting PESA rules, provisions for recruiting of STDD and its recruitment policy be included
4. ITDP is one of the weakest departments and its officers must be given more power. Weaker sections in the society should not be operated by weaker departments.

Discussant 2: Mr. Gyanandhar Sashtri (Chhattisgarh)

Systems are not working as they should in the world of tribal people casting distrust whether people of India did truly get independence. PESA came from the pressure and struggles of tribal people and not as a gift. It allows tribal people to exercise power and their traditional knowledge. But when tribal people are equipped with knowledge and power, it scares the political politicians and their political parties. Governments argue that PESA is very significant and important, but then why are the governments not popularizing it? Everything to do with tribal people is riddled with corruption. It is the core issue in tribal funds and TSP. Clear violation of PESA is happening everywhere even in the resource-rich Chhattisgarh state. Even after opposition of the Grama Sabha tribal land is given to big industries like Jindal and similar

companies. More over when the community protests and opposes the law and order threat is used against the community. The community protests are genuine; it is for water or is demand for land. But governments crush the genuine voice of the common man in the name of law and order situation. The reason why PESA should be taken up is because it shall make the traditional Panchayat more powerful, it shall make its own law suitable for the community and make situations better for the tribal communities.

Tribal Sub Plan (TSP)

The Fifth Five Year Plan marked a shift in the approach when the Tribal Sub Plan (TSP) for direct benefit of the STs was launched. The Tribal Sub-Plan for the Scheduled Tribes was designed to channelise the flow of outlays and benefits from the general sectors in the plans of the States and Union Territories (UTs) and Central Ministries in proportion to their population both in physical and financial terms. It is an umbrella under which all schemes implemented by the States and Central Governments are dovetailed for addressing different needs of the Scheduled Tribes. It is basically an area development programme with focus on tribals under which infrastructural development and family-oriented programmes are undertaken.

Bhure Lal Secretary, Ministry of Tribal Affairs, GoI

Discussions

Many issues are faced in the implementation process of TSP fund, the middlemen are capturing major part of funds – i.e. the contractors, politicians/ political parties, etc.

Mr. Sreeraman Koyyon: Kerala Government should issue a white paper showing the funds delivered through TSP in connection with the PESA Act. The schemes for tribals must be horizontal ones rather than vertical. 10 states have Scheduled Areas, 5 states enacted rules, but none are operational. Maharashtra is the state with amendments. And Kerala has the experience of untied funds which no other state has. KILA can take the lead to scrutinize the TSP funds allocated and used so far.

Mr. C R Bijoy: The review of PESA was provided in the keynote address. The States having Scheduled Areas, which currently is 10 in number, were to amend their Panchayat Raj Act within a year of the enactment of PESA by the Parliament. At that time there were 9 States; Telengana was carved out of Andhra much later. Of the 9 states, 8 enacted the amendment within a year, i.e 1997; Jharkhand did not even have a state Panchyayat Raj law until 2001 when the Panchayat raj act was enacted by its Assembly incorporating PESA provisions into it. Of these 10 states, only four states had formulated and notified Rules to operationalise PESA amendment to the State laws till date, Andhra Pradesh, Himachal, and Rajasthan in 2011 and Maharashtra in 2014. With the formation of Telengana the number became five. In other words, after 2 decades of the enactment of PESA it is only 5 where the law is operational. Further, not a single state had complied fully with the PESA provisions when the State amendment was enacted.

The Rules in the five states further diluted the provisions. Both the central government and the State governments are yet to make suitable amendments to a number of subject laws to make them PESA compliant. Recently Maharashtra has progressed further in making a number of its subject laws PESA compliant. This has happened because of political pressure from Adivasis organizations and struggles. Therefore the valuable lessons to be learnt from the experience of PESA are from the mistakes that have been committed (most of them have been studied and commented upon by Ministry of Panchayat Raj). Kerala has an advantage in terms of ensuring that the amendment to Kerala Panchayat Raj to extend PESA incorporates these lessons. A study of two states, Maharashtra and Odisha clearly demonstrate that traditional Gram Sabhas are the only effective functioning Gram Sabhas in the Scheduled Areas covering many of the subjects under PESA even though these are not recognized by the administration and the mainstream as legally valid with PESA in force though not in operation.

Mr. Amitab Bachan: Definition of income generation is only cash. There is a need to redefine it by adding water bodies etc to income as total assets.

From a participant: Make Penal Provision for misappropriation of funds.

KEY SUGGESTIONS & RECOMMENDATIONS

1. Prior to launching of PESA, elaborate training is given to officials of departments at all levels.
2. A special cadre to be created by the government for recruiting eligible and competent candidates to tribal related institutions and departments.
3. While drafting PESA rules, provisions for recruiting of personnel to Scheduled Tribe Development Department and a recruitment policy be included
4. Create provisions to provide more power to the ITDP.

6

TECHNICAL SESSION IV:

EDUCATING GRAMA SABHA

6

Technical Session IV:

Educating Grama Sabha

Day 2 (30-04-2016)

Session IV: Educating Grama Sabha

Chair: Dr. Jos Chathukulam, CMD, Kerala

Discussants: Dr. Amitab Bachan (Kerala) & Mr. Ramesh Sharma (New Delhi)

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 details 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.

Summary of the Session

In the Kerala context it is a paradigm shift to move from Panchayat related Grama Sabha to PESA Grama Sabha. This shift will be visible in traditional resource management and conflict resolutions including plan preparation and approval. It is vital that PESA Grama Sabha prevails since it is directly linked to the existence of PESA ***(Chair).****Mainstream attitudinal problems towards the tribal people, their knowledge systems and structures of governance need total shift in the context of discussions about educating the Grama Sabha. The very term is confusing as there are multiple representations of Grama Sabhas making it difficult to recognize the PESA Grama Sabha even among bureaucracy. There is a need to understand the spirit behind acknowledging the 'history of injustice' perpetrated on tribal people. There are also overlaps and conflicts of PESA with the Panchayat systems in the state, prior to the process of empowering/educating the PESA*

*Grama Sabhas (**Dr. AmitabBachan)** The significance of Grama Sabha empowerment is connected to attitudinal changes of the government towards the Grama Sabha and situating its current status to what changes need to be. All functional aspects have been diluted to suit the government systems that ultimately work against the tribal people. Tribal Advisory Council (TAC), Discretionary power of the Governor and Harmonization of Law have been remolded to suit the government systems. Apart from these, non-tribal influx, militarization and trade agreements are prime challenges that the Vth schedule areas are currently faced with **(Ramesh Sharma).***

Introduction from the Chair

It is after the 73rd Constitutional Amendment and post the introduction of decentralization that Kerala became familiar with Grama Sabha, which is the Grama Sabha associated with Panchayats. PESA Grama Sabha is at the core and shall be vital as it gives priority to culture, customs, community resource management, traditional dispute resolution mechanisms etc and play a major role and will be crucial. Preparation, approval and evaluation of plans shall be the onus of the PESA Grama Sabha, not of the Grama Panchayat. Also administrative power should be given to tribal people. In the context of educating the Grama Sabha, issues like how, who, whom, roles and responsibilities and other detailed aspects need discussions. This is very important since failure of Grama Sabha will lead to the collapse of PESA itself. The relevance and urgency of educating the Grama Sabha is within this context.

Discussant 1: Dr. Amitab Bachan (Kerala)

Discussions on educating or empowering the Grama Sabha should primarily query why to empower and what kind of empowering. A general opinion is that the Grama Sabha lacks knowledge. But the reality remains that the Grama Sabhas are very knowledgeable, highly democratic with their self-evolved structures and systems. There ought to be clarity on what a Grama Sabha is and foster the right attitude while training Grama Sabhas. In fact it is advisable to setup a committee in Kerala to analyze the Grama Sabhas. In the context of educating the Grama Sabha, everyone needs to recognize the 'historical injustice' inflicted on the tribal people in the country.

'Historical Injustice'

[Introductory part – Para 3] - the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem

[Introductory part – Para 4] - it has become necessary to address the long standing insecurity of the tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions

FRA 2006

There are different Grama Sabhas in practice and clarity on PESA Grama Sabha is important especially since there is confusion even among the bureaucracy about PESA Grama Sabha. FRA 2006 states to consider hamlets as a unit for Grama Sabha. Kerala government has recognized tribal habitats as Oorukoottoms. And within these there is need to discuss about missing operational structures, politically motivated Panchayat resolutions and the periodicity of power and conflicts with Oorukoottoms. It is better to define the PESA Grama Sabha in Kerala Keeping all these in mind. Another aspect for discussion is about reforming the tribal community which means the diminution of the traditional Grama Sabha since governance issue surpasses traditional systems. There is already serious loss of traditional knowledge. Yet there is reluctance to learn from the community action based approaches.

Discussant 2: Mr. Ramesh Sharma (New Delhi)

Empowering the Grama Sabha is only possible by changing the basic configuration of governance and by establishing the Grama Sabha at the centre of the Vth schedule/PESA. There are several vital issues to be tackled prior to educating the Grama Sabha. The first and foremost aspect is that without changing the basic attitude of Governments, the education system will not change. It should be a stocktaking of 'what is' to 'what should be'. Every aspect in relation to Vth schedule/PESA needs deliberations. Tribal Advisory Council (TAC) is mandatory and with the separate administrative mechanism, it is now reduced to a cabinet subcommittee on tribal affairs (In Chhattisgarh it is the Chief Minister who is the head of TAC).

Tribal Advisory Council (TAC)

As per Para 4(1) of the Fifth Schedule of the Constitution, there shall be TAC in each state having Scheduled Areas therein and, if the President should directs, also in any State having Scheduled Tribes but non- Scheduled Areas therein

Role of TAC

To advice on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor. No regulation shall be made unless the Governor making the regulation has, in the case where there is a TAC for the State, consulted such Council

Discretionary power of the Governor is meant for safeguarding from absolute legislative power of their provincial neighbors. But in reality Governor cannot go beyond the decisions of the council of ministers. This implies that the governor cannot move constitutional provisions in scheduled areas.

Harmonization of the law stems from the *Seventh Report* of Harmonizing committee of The *Second Administrative* Reforms *Commission*, observing that PESA provisions need harmonization between Central and State legislations, between Panchayat, forest and revenue legislations and court orders and other laws. But as in the case of Vth schedule it is being nullified by the presence of council of ministers (governor cannot go beyond the advice of council of ministers), tribal department (writing reports for Governors), and cabinet's extraordinary powers (for legislative notifications and regulations). Amending state Panchayat legislation has turned to be a 'legislative ritual'. There are no further rules, guidelines and mechanisms brought out and operational structures are missing.

….a critical issue in the implementation of PESA is to harmonize its provisions with those of the central legislations' and had, accordingly, recommended that there is a need to harmonize the various legislations being implemented in tribal areas with the provisions of PESA Act. The Report made an important observation that, 'no integrative exercise has so far been undertaken to examine the relevance of different central laws to these Fifth Schedule Areas and to harmonize them with the aims and objectives of the PESA. Such an exercise is overdue. Among the laws which warrant particular attention are the Land Acquisition Act, 1894, the Mines and Minerals (Development and Regulation) Act, 1957, the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, and the Indian Registration Act'.-

Report of the Harmonizing Committee,
The Second Administrative Reforms Commission, Seventh Report

Challenges in 5th schedule areas include; demographic shift (influx of non tribal in tribal zone), militarization/criminalization of tribal movements (tribal under trials, deployment of Para militarily forces, fake encounters and mounting resource acquisitions), reflections of PESA/Vth Schedule provisions in new forms of law or policy (land acquisition Act of Chattisgarh (2015), industrial policy of Orissa, Mineral policy of Madhya Pradesh etc) and Free Trade Agreements/Trans Atlantic Trade Agreements (that force to amend similar legislations in Latin America, Africa and Asian countries that dispossess millions of marginalized people). When educating the Grama Sabha is being considered, due importance is called for the legal status of the Vth Schedule, ad-hoc positioning of the judiciary, understanding and respect of eco-anthropology and tribal ethos. Rethinking of whether reforming tribal communities is a wise idea or not in reality, is also vital.

Discussions

Dr. Abey George: The process of exerting and building up pressure need to come from Grama Sabhas. Trainings are being conducted but are not contributive. Need to work out the details of the process as to how to introduce the issues and concerns.

Mr. Sreeraman Koyyon: Need to change the approach to Adivasi. There are laws that will be implemented by officials and judges. Provide more roles to NGOs and ITDPs. Change the incentive team and the hegemony of local politicians.

Mr. Ashok Choudhari: Clarity on transfer and transformation of power is needed. Training top leaders is essential.

Mr. PV Rajagopal: Reforming the tribal community is unwise reality; reform means reduce traditional Grama Sabhas.

Mr. Sunil Kumar: Building knowledge process should come from Grama Sabha

Chair: Transfer of power versus transformation of power; which is more suitable? Learning process of tribal law is very essential.

KEY SUGGESTIONS & RECOMMENDATIONS

1. There ought to be clarity on what a Grama Sabha is and foster the right attitude while training Grama Sabhas. It is advisable to setup a committee in Kerala to analyze the Grama Sabhas
2. Define the PESA Grama Sabha in the Kerala context
3. Demographic shift in tribal zones, militarization/criminalization of tribal movements, dilution of PESA/Vth Schedule provisions and free trade agreements etc are challenges to tribal community and their regions.
4. Due importance is called for the legal status of the Vth Schedule, ad-hoc positioning of the judiciary, understanding and respect of eco-anthropology and tribal ethos to be focused while educating Grama Sabha.

7

TECHNICAL SESSION V:

ISSUES RELATED TO IDENTIFICATION OF HABITATS

7

Technical Session V:

Issues Related to Identification of Habitats

Session V: Issues Related to Identification of Habitats

Chair: Mr. Harikumar T.P, *****

Discussants: Mr. Rajendra Prasad (Kerala), Mr. Anil Kumar Gupta (Madhya Pradesh)

Identification of Villages – Demarcating Habitats

- Identification of habitat 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.

Summary of the Session

The spread of service industry tourism in tribal areas is very evident in Kerala, especially in the districts of Idukki, Wayanad, and Palghat. The prominence given to tourism with special tourism area status in Idukki can lead to conflicts with tribal systems and resource management, including the encroachment into tribal lands. In the absence of major minerals and mining in Kerala, tourism poses a big threat to tribal habitats ***(Chair)****. Due consultations have not been made with Oorukoottoms and Adivasi organizations in selecting 2245 Ooru included in the PESA list in Kerala. The government continues its top-down approach and debates on FRA ensured rights are still inconclusive. Dr. Ambedkar's observations about failure of the Indian Constitution to provide equal opportunities, and the recent published Caste Census findings etc. underline that marginalization of the poor and tribal peoples are a fact. The spread of tourism is very high in tribal areas and this needs to be checked when habitat mapping. 5th Schedule and PESA has a larger perspective to protect the Western Ghats and the human heritage* ***(Sri. Rajendra Prasad)****. The Tribal way of life of need-based resource-dependency is in contrast to that of a life practice of greed and plenty. PESA recognizes the Grama Sabha, traditional rights of the Grama Sabha in planning and managing MFPs, minor minerals, and minor water bodies. Demarcating habitats is made more complex as various agencies define habitats in different terms* ***(Anil Kumar Gupta – Madhya Pradesh).***

Introduction from the Chair

Kerala does not have major mineral resources and currently mining is no threat to tribal habitat areas. But there shall be conflicts with the tertiary sector, especially tourism. Both Idukki and Wayanad districts with their comparatively cool climate and water availability attract service sector industries like health care, education, and tourism. Land encroachment in Idukki district for illegal tourism facilities has been rampant with the connivance of bureaucracy and Local Self Governments, especially after 2007. As many as 20,000 acres of Government land and 3000 illegal resorts and hotels have been constructed in Munnar and surrounding areas of the district. In 2005, Kerala Government declared Munnar a 'Special Tourism Zone – Munnar'; comprising of Munnar and the surrounding 5 Panchayats. All these Panchayats have listed Adivasi settlements and the only Tribal Panchayat in Kerala, Edamalakudy is in the vicinity of the special tourism zone. The declaration of Special Tourism Zone - Munnar has put impetus to illegal land grab and construction. The other major tourist destination is Wayanad, a tourism priority district. In this National Seminar, three discussants from different parts of the country have raised the issue of tourism industry encroaching into Tribal peoples' habitat areas. Tourism development in Tribal areas is in conflict with Section 4 (d) and 4 (e) 1 of PESA. ***(Every Grama Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and their customary modes of dispute resolution (Sec 4 (d)) and approve the plans for the social and economic development before such plans are taken up for implementation by the Panchayats at the village level (Sec 4(e) i).*** Service sector is a very powerful economic player in the State and Central economy with strong ministerial and industry backing. The service sector, especially the tourism sector needs to be taken very seriously in discussions on Tribal habitats, rights, culture, and overlapping of rules. Tourism is not a clean handed economic activity as it is often posed to be - land grabbing, siphoning of natural resources especially of water, pollution and waste generation, resulting environmental degradation, cultural intrusion and a politicization of local people and their systems are characteristics reported globally as well as in India.

Discussant 1: Mr. Rajendra Prasad (Kerala)

Equal distribution of wealth has not happened in the case of Scheduled Castes and Scheduled Tribes in the country. The employment scenario is also not different. PESA ensures self-rule in Adivasi regions but the selection and mapping for implementation has not been democratic and not done in consultation with the people. The selection criteria of 2245 Ooru included in the PESA list in Kerala is not yet clear and the Government did not do any consultation with Oorukoottoms or with the Adivasi organizations in the selection process. This is in violation of the 2003 Oorukoottom and FRA 2006 Acts. In Kerala, the Government should ensure that all Adivasi people get the benefits of PESA. The top-down approach in the PESA implementation process should be reversed with a bottom-up approach. FRA when introduced in 2006 ensured individual rights, but discussion on community rights and development rights began only in 2012. If community rights were in practice, it would have averted infant deaths in Attapadi. There were 495 infant deaths in the last 5 years here. And Attapadi is the only region that practices traditional Oorukoottom systems in the State. India is one among 148 signatory countries that ensured protection of indigenous peoples under the UN Charter Article 4 and 5 in 2007.

United Nations Declaration on the Rights of Indigenous Peoples

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State.

The FRA 2006 begins with the admission that the state has committed 'Historical Injustice' on the Adivasi people. Yet, after 10 years what is the status of FRA? Dr. Ambedkar had judged the Constitution of India as a failure because there was inequality in the distribution of wealth in the country. His observation was also based on factors like resources, knowledge, and occupation denied to a section of the population. According to the Caste Census published last year, rights over land and employed Tribal people are less than 20 percent of the population. In this context, laws in favour of Tribal people need emphasis. When laws like FRA and PESA favouring the Tribal people are declared, at once they are counter posed with anti-Tribal land acquisition bill. Tribal people are not given due significance by Government officials. Tourism is yet another ongoing threat. There are more than 100 Resorts, some on Advasi lands in Attapadi. In Wayand, there are more than 2000 Resorts and 'Home Stay' facilities. Tourism is encroaching on Adivasi habitats/regions leading to various kinds of exploitation, resource extraction, and pollution**.** This spread of Resorts needs to be stopped by using PESA mapping. It is not proper to reduce 5th Schedule and PESA to resolving Adivasi issues alone. Rather, it should be seen as an instrument to protect the nature, earth and resources of Western Ghats – the human heritage. All training to address issues should be in consensus with this entirety.

Discussant 2: Mr. Anil Kumar Gupta – (Madhya Pradesh)

Co-existence of humans and nature is the Tribal way of life. The whole Tribal life is community-based and not private. This is in total contrast with the life practice of greed and opulence. Through their customs, traditions and culture, tribal people fulfill their basic needs. Only the Tribal way of life can save the world. The British interfered with the traditional rules and practices of Tribal people, then provided them with concessional rights, and recognized the autonomy of Tribal Councils. Later post-independence, it is these areas that our Constitution upheld as the Vth and VIth Scheduled Areas. PESA 1996 recognizes the customary law and traditional management practices of community resources. According to PESA, a village consists of a habitation, hamlet or its groups, with the community managing its affairs following traditional customs. ***{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; (PESA 4 (b)}.*** The PESA Grama Sabha is based on population whose names are included in the electoral

rolls of the Panchayat at village level. ***(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; PESA 4 (c)*** PESA ensures planning and managing MFPs, minor minerals, and minor water bodies by Grama Sabha. Tribal people thought PESA can relate to their traditional rights. In spite of all these, problems do exist in issues like of habitats and habitations. The problem of defining habitats are made more complex when different agencies try to define habitats on different terms; the PESA, FRA, MoTA, etc.

Discussions

Dr. Amitab Bachan

The discussion should be based on geographical identification of habitats. The habitats of STs include the present and past habitations and traditional resource collection areas in the forests and forest fringes including in water bodies**.** The recent legislation - Forest Rights Act - provides more clarity regarding habitation, habitat, and traditional resource use areas of STs including PVTGs. The ST members of the Grama Sabha have to define the traditional boundaries with their own language, traditional names, and the roles of officials in facilitating the process or conversion of it into a scalable map. Attempts by Forest Department in Wayanad region to map CFR areas under FRA 2006 restricted the Traditional MFP collection areas to a few (2-10) hectares for a community; whereas that actually ranges from 1000 ha for Agriculture-based Tribes to 14000-22000 ha for PVTGs**.**

Mr. C R Bijoy

Decisions about Scheduled Areas are political decisions. Scheduled Area finds mention in Article 244 of the Constitution, which applies to 'Administration of Scheduled Areas and Tribal Areas'. And the Scheduled Areas are governed by the provisions of the Fifth Schedule. The Fifth Schedule provides for the 'Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes'. All Central and State legislations for the welfare of the Scheduled Tribes have to be in conformity with Article 244. The Fifth Schedule defines Scheduled Areas[1] as areas notified as such by the President of India. It was in 1971, through an amendment that the President was empowered to increase the Scheduled Area in consultation with the Governor. Tribal Advisory Council was to be constituted in all Scheduled Areas to advise the concerned Governors. The Governor under the Fifth Schedule have overriding powers to prevent or modify any Legislation passed by the Parliament and the Assembly in its application to the Scheduled Area; the Governor also could make regulations for peace and good governance of the

(1) Means such areas as the President may by order3 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 Scheduled 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 or 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;

Scheduled Areas. The Constitution does not provide a definition of what should be the unit of area to be included under Scheduled Area. It was entirely a political and administrative decision. In practice, an area with a majority of Scheduled Tribes or with substantial Scheduled Tribe population with the unit of area being a Revenue Village, Panchayat, Block, or District. However with the enactment of PESA, the unit of governance came to be the village defined as 'habitation or a group of habitations or a hamlet or a group of hamlets' [Sec.4(b) of PESA], which has subsequently been adopted in FRA [Sec.2 (p)]. Further, Sec. 2A[1] of the Rules to the Forest Rights Act provides a detailed and practical way to identify the villages as per the PESA definition of village. The geographical jurisdiction of the 'village' in PESA would be the revenue boundary along with the forest lands, if any, that would be eligible to be recognized as 'Community Forest Resource'[Sec.3(1)(I)].

FIFTH SCHEDULE [Article 244 (1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART C

SCHEDULED AREAS

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

(2) The President may at any time by order[2] —

(a) direct that the whole or any specified part of a Scheduled 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 or 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;

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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.

2A. Identification of hamlets or settlements and process of their consolidation

The State Government shall ensure that, -

(a) every Panchayat, within its boundaries, prepares a list of group of hamlets or habitations, unrecorded or unsurveyed settlements or forest villages or taungya villages, formally not part of any Revenue or Forest village record and have this list passed by convening Gram Sabha of each such habitation, hamlets or habitations included as villages for the purpose of the Act through a resolution in the Panchayat and submit such list to Sub-Division Level Committee.

(b) the Sub-Divisional Officers of the Sub – Division Level Committee consolidate the lists of hamlets and habitations which at present are not part of any village but have been included as villages within the Panchayat through a resolution, and are formalized as a village either by adding to the existing village or otherwise after following the process as provided in the relevant State laws and that the lists are finalized by the District Level Committee after considering public comments, if any

(c) on finalisation of the list of hamlets and habitations, the process of recognition and vesting of rights in these hamlets and habitations is undertaken without disturbing any rights already recognized;

1. See the Scheduled Areas (Part A States) Order, 1950 (C.O. 9), the Scheduled Areas (Part B States) Order, 1950 (C.O.26), the Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102) and the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 (C.O. 109).
2. See the Madras Scheduled Areas (Cessor) Order, 1950 (C.O. 30) and the Andhra Scheduled Areas (Cessor) Order, 1955 (C.O. 50).

Mr. S C Beher

Govt. of India introduced Smart City Programme in Gujarat, Madhya Pradesh, Orissa etc. This move dilutes Scheduled Areas and is against the Tribal people. In the case of Kerala, constituting FRA in Grama Sabha is mandatory.

KEY RECOMMENDATIONS & SUGGESTIONS

1. In Kerala, the Government should ensure that all Adivasi people get the benefits of PESA. The top-down approach in the PESA implementation process should be reversed with bottom-up approach.
2. *Oouru* based mapping in PESA demarcating mapping process.
3. Discussions on Tribal habitats, rights, culture and overlapping of Rules etc. need to take the service sector especially tourism sector very seriously in Kerala.
4. Need to stop the spread of Resorts while PESA habitat mapping.
5. All training to address Tribal issues must include the protection of nature, earth, and resources of Western Ghats; the human heritage.
6. The problem with defining habitats are made more complex, when different agencies try to define habitats on different terms; the PESA, FRA and MoTA.
7. The Rules to the Forest Rights Act provides a detailed and practical way to identify the villages as per the PESA definition of Village.
8. The ST members of the Grama Sabha have to define the traditional boundaries with their own language, traditional names, and the role of the officials to facilitate the process or conversion of it into a scalable map.
9. Verify all existing Laws under Article 244, Scheduled Areas, PESA, FRA and also TAC while considering demarcation of habitats.

8

TECHNICAL SESSION VI:

RESERVATION OF SEATS

8

Technical Session VI: Reservation of Seats

Session VI: Reservation of Seats

Chair – Mrs. T. Ushakumari, President, District Panchayath, Wayanad

Discussants: Mr. C.R. Bijoy (Tamil Nadu) & Mr. M. Surjith (Kerala)

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 Scheduled Area. Under the circumstances, at the operational level, a number of doubts arise.

Whether the total population of the Tribes in a Panchayat is more than 20%, can this Panchayat have a majority representation of elected members? And whether other States have 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, have 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.

Summary of the Session

Post elections, Tribal Elected Representatives are not of much help to the community as their priorities move away from issues of rights and welfare of the community. Tribal people will have to take initiatives themselves for their betterment without waiting for others ***(Chair)****. PESA is unambiguous about powers to Grama Sabha, about community representations, reservations, etc. in Panchayats. Provisions exist to prevent encroachments into the power of Grama Sabha. But governments with an eye for resources are converting the status of Scheduled areas into Municipalities. There are Municipalities in the list of proposed Scheduled Areas in Kerala* ***(Mr. C R Bijoy).*** *Empirical research to gauge the benefits of reservation policy (that ensured inclusionary dimension of decentralization to Scheduled Tribes) shows that although the inclusionary dimension in the research area was achieved, there is wide disparity across different Tribal groups and the numerical strength of their population is not a decisive factor compared to general population. This suggests that certain number of seats be reserved for the deprived according to their population at micro level and as per the provision of PESA Section 4(h), nomination to higher levels of Panchayats could be discussed in the Kerala context (****M Surjith).***

Introduction from the Chair

There are 294 seats reserved for Scheduled Castes and 123 for Scheduled Tribes in the State for LSGIs. The experience of having Elected Representatives from the community is not very encouraging. This is since the Elected Tribal Representatives do not take due interest in Tribal issues. Once elected, they also fall into the 'development' mode and priorities are given to build roads and bridges. They do not realize that as people who represent their own community, they should act at least for the welfare of their own community. Let us not have any misconception that other communities will come and help the Tribal people. Instead, the Tribal people will have to do our own bit.

Discussant 1: Mr. C R Bijoy (Tamil Nadu)

Grama Sabha is central to PESA which actually defines the powers of the Gram Sabha. The powers include traditional rights, management of resources and social institutions, prohibitions and regulations, development plans etc. It also defines the structures of power above the Grama Sabha, about community representations, reservations of seats, and reservation in the posts of office bearers. The Gram Sabha under PESA conforms to the assembly of people in a habition/hamlet or a group of habitations/hamlets. This Gram Sabha is not comparable to or is the same as Gram Sabha under the State Panchayat Raj Act. Where the Gram Sabha is the assembly of the people in a Gram Panchayat, consisting generally of numerous revenue villages having a number of hamlets, that is too large to be of any practical functioning; unlike the PESA village which is small and compact. Secondly PESA makes it clear that the structure of Panchayats at higher level do not encroach into the power of Grama Sabha. ***(PESA 1996 - 4 (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;).*** PESA is unambiguous with reference to reservation of seats in the elected bodies. Reservation for STs should be proportionate to the ST population and not less than half the number of seats. ***(PESA 1996 4.(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).*** The Chairperson of the elected bodies should be an ST***. (PESA 1996 4.(g) Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes).*** If there are any ST communities who are not represented, then they are to be nominated and such nominated number should not be more than 10% of the total number of seats. However in Gram Panchayats and districts where only a part of the area is Scheduled Area, the provision of reservation of Chairperson for ST is not followed. Neither the 50% reservation for the Panchayat body is adhered to. It is the same at the District Panchayat, when only part of the area is Scheduled Area. Further, in a district with only a part under the Scheduled Area the district level elected members and the officials have to deal differently

the Scheduled Area from that of the non-Scheduled Area, the former with deep respect and the latter with disregard as legally provided. The Parliament is yet to enact the Municipalities (Extension to Scheduled Areas) Bill 2001. There is a legal vacuum in the Municipal areas in Scheduled Areas. At the same time, many States have been upgrading Panchayats to Municipalities which then take out that area from the purview of PESA provisions by making it applicable under the general Municipal Act with no safeguard for STs. There are court cases challenging such upgradation as a violation of the Constitution. At the same time, PESA in Sec. 4 (o) [1] makes it clear that the structure above the Gram Sabha in Scheduled Area shall be on the pattern of the VI Schedule of the Constitution. In Kerala, there are Municipalities in the proposed Scheduled Areas.

THE CONSTITUTION OF INDIA "PART IX"* THE PANCHAYATS

243-D. Reservation of seats–(1) Seats shall be reserved for–

(a) the Scheduled Castes ; and

(b) the Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under Clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

*Inserted vide Constitution 73rd Amendment Act, 1992 and came into force on 22-04-1993.

[1] Sec.4 (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.

Discussants 2: Mr. M Surjith (Kerala)

Reservation of seats and positions to women, SCs, and STs are part of the 73rdAmendment. Kerala has two decades of experience in decentralization. This empirical research was conducted to identify how far the reservation policy benefits the Scheduled Tribes of Kerala. Scheduled Tribes is an umbrella term and hence focus was on comparison across different ethnical groups.

Aim of the study: looked into 3 aspects

1. How far the reservation policy ensured the inclusionary dimension of decentralization?
2. Examine if the elite capturing phenomena is evident in the Tribal representation?
3. If so, who cornered the larger benefit of reservation?

Area of study: Collected data from two northern districts – Kannur and Wayanad – focus limited to representation in Grama Panchayats

Time of study: During 2011 – 13 periods

Major findings: Kannur – 81 Grama Panchayats - Scheduled Tribe reservation in 20 Grama Panchayats – 22 reserved seats – Actual ST Members: 26 nos.

Tribe-wise Participation				
#	Name of Tribe	No.	%	% of ST Population
1	Paniyan	4	15.38	33.24
2	Kurichiyan	11	42.31	24.00
3	Karimpalan	9	34.62	27.00
4	Mavilan	2	7.69	12.21
	Total	**26**	**100.00**	

Major findings: Wayanad – 25 Grama Panchayats - 84 Reserved Seats – Actual 92 ST members

Community-wise Participation				
#	Name of Community	No	%	% of ST population
1	Paniyan	9	10	45
2	Kurichiyan	41	45	16
3	Kurumar	37	37	16
4	Adiyan	3	3	7
5	Kattunaikkan	3	3	11
6	Other STs	2	2	5
	Total	**95**	**100**	

What it shows?

1. Reservation inclusionary dimension is achieved. However, there exists a wide disparity across different Tribal groups.
2. The defined Tribal groups did not get adequate representation - (Paniyan, Adiyan, Kattunaikkan).
3. Population, numerical strength is not at all a decisive factor compared to general population.

Policy suggestions

- A revisit in reservation policy itself is necessary.
- Certain number of seats shall be reserved for deprived according to their population at micro level.
- PESA section 4(h) gives authority to the State for nominating not more than 10 % of elected members from Tribal groups who have no representation in the Panchayat at intermediate/district level.
- This possibility also can be discussed according to the given Kerala context.

PESA 1996

Section 4 (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;

Discussion:

Mr. Geethanandan

Inclusionary aspect of decentralization needs to be noted.

Mr. Sreeraman Koyyon

Recalling under PESA of Elected Representatives and continuation of power transferring is not happening

KEY SUGGESTIONS & RECOMMENDATIONS

1. Safeguard against Panchayats at higher level not to encroach into the power of Grama Sabha.
2. Gram Sabha under PESA is not comparable to the Grama Sabha under the State's Panchayat Raj Act, where the Gram Sabha is the assembly of the people in a Grama Panchayat consisting generally of numerous revenue villages having a number of hamlets. This is too large to be of any practical functioning unlike the PESA village, which is small and compact.
3. Concern against Governments upgrading PESA areas to Municipalities with clear objective of taking away resources from the region and community rights.
4. A revisit in reservation policy, among the tribal populations, itself is necessary in the context of reserving certain number of seats for deprived according to their population at micro level.

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TECHNICAL SESSION VII:

PESA AND AMENDMENTS OF EXISTING ACTS

9
Technical Session VII:
PESA and Amendments of Existing Acts

Session VII - PESA and Amendments of Existing Acts
Chair: Adv. K S Santhakumari, District Panchayath, Palakkad.
Discassants: Mr. D Sanky (Kerala), Mr. Sandhaya Devi (Odisha)

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

Summary of the Session

Kerala is yet to come to terms with the Grama Sabha concept other than of the Grama Sabha associated with the Panchayati Raj Institutions. Government recognition of Oorukoottoms is the recognition of the rights of tribal people, but there are still hurdles to overcome to its satisfactory functioning. Discussions need to consider the Kerala Panchayat Act and the Municipality Act ***(Chair).*** *Is there a conflict between recognizing the traditional rights and systems the tribal people follow as against the attempts to make them fit into other systems? Have all systems and practices including management practices been documented and scrutinized? Is there a need to institutionalize and what could be the outcome? Through PESA, can the tribal people and their systems be immunized from other tiers of the PRIs and departments?* ***(Mr. Sanky)****.Though PESA has the*

*potential for development of tribal people, it has not been implemented in Odisha for lack of Rules that the state government needs to make. There was distortion of criteria in selection of Grama Sabha, of the community rights over bamboo as a MFP and false propaganda that the tribal rights over MFP – bamboo affecting the elephants. There are 17 legal compliance issues against PESA in Odisha. This is the situation even when the tribal population is 22.8 percent of the state's population (***Sandhaya Devi).**

Introduction from the Chair

There are several conflicting positions that implementers of PESA encounter. 10 states have so far enacted PESA but rules for implementation are missing in this Act. Governments, in order to divert land and resources change the status to urban/municipality. There is no regulation against influx of non-tribals and outsiders often claimed to be for developmental purposes. There is loose adherence to the PESA Act provisions preventing transfer of tribal lands to non-tribal persons. There is also the issue with FRA as the recognition is given to individual ownership and not to common property resources. Governments supersede FRA rules to ouster tribal people without providing adequate compensation and rehabilitation for development projects. In the case of Kerala, it is only after the 73rd Constitutional Amendment and after introduction of decentralization that Kerala became familiar with the concept of Grama Sabha as the Grama Sabha associated with the Panchayats. The PRI itself has a Grama Sabha which is not the PESA Grama Sabha. Kerala government has recognized tribal habitats as Oorukoottoms. Harmonizing of the traditional and the formal System has not yet happened satisfactorily. There are jurisdictional conflicts between Gram Sabha and line departments. The Panchayat has become implementers of decisions of the Grama Sabha rather than the decision makers. While looking at the need for PESA and amendments to existing Acts, serious discussions on Kerala Panchayat Act and also on the Municipality Act is necessary.

Discussant 1: Mr. D Sanky (Kerala)

There are some basic questions that seek explanations in the PESA. PESA endows the premise for recognition of rights, membership, and governance structure, planning, rights over resources and so forth. Each of these need close scrutiny as to whether all these have been studied and documented critically, its compatibility while acting with other (larger) systems, whether each of the traditional systems need to be institutionalized and fundamentally whether the tribal society can be kept immunized. Section 4 of PESA and its sub sections elaborate each of these while pertinent questions are raised for discussions and clarity:

PESA Section 4 (a): Legislation in consonance with the customary law, social and religious practices, and traditional management practices….: (it has been argued that several of these are still in practice and therefore to be honored through legislation)

- Have all these been documented?
- Are we sure that all these customs and practices have to be institutionalized through legislations----------?

PESA Section 4 (b): a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets …..; (its argued that to do away with any confusion/conflict, need to take geographical boundaries as the basic rule)

Fixing of geographical boundaries:

- Whether geographical boundaries should be fixed, if so how?
- Whether customary habitats are to be identified with specific geographical/revenue boundaries fixed through a detailed study with predefined criteria like the present delimitation mechanisms?

PESA Section 4 (c): Criteria for Grama Sabha membership….:

- Is it single or duel membership?

PESA Section 4 (d): In order to give competency to Grama Sabha to preserve traditions, customs and identity…:

1. Need to be define, identify, document and validate:
   - Tradition
   - Customs
   - Cultural identity
   - Community resources and the prevailing management practices
   - Customary mode of dispute resolutions
2. Governance Structure:
   - What are the institutions?
   - Within the Grama Sabha, will there be an executive with office bearers?

PESA Section 4 (e): (i) (ii): every Gram Sabha shall: approve of the plans, programmes and projects for social and economic…, be responsible for the identification or selection of persons as beneficiaries….:

Grama Sabha objectives:

- Whether Panchayat Raj Acts provisions related to GS (sections 3, 3A, 3B) are sufficient?
- Planning and beneficiary selection
- Power, rights and responsibilities
- Approval for implementation by the Panchayats

PESA Section 4 (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…:

- Utilization Certificates (254 (2) (XXXVI)
- Whether this section related to publication of accounts and its audit – can this be the suitable approach?

PESA Section 4 (g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population….:

Proportionate reservation of seats in Panchayat:

- Minimum 50 percent of total
- Presidents 100 percent

PESA Section 4 (h): the State Government may nominate persons belonging to such Scheduled Tribes….:

Nomination to higher tiers: (no Comments)

PESA Section 4 (i): the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas….:

Acquisition of land and rehabilitation (protection of Western Ghats)

- Whatever be the present land use system/culture prevailing ,sustainable agricultural and MFP collection practices are to be ensured though clear legal provisions

PESA Section 4 (j), (k), (l) planning and management of minor water bodies…., …. Management of minor water bodies: made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas …., made mandatory for grant of concession for the exploitation of minor minerals by auction;

Resource management (no Comments)

PESA Section 4 (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,

Institutionalizing

- decision making procedures of the proposed GS with powers:

PESA Section 4 (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

Immunization of Grama Sabha:

From other tiers of Panchayat and Govt. departments?

Discussant 2: Mrs. Sandhaya Devi (Odisha)

History of Adivasi people can be situated as before and after PESA since it is one of the legal framework and a political legislation with the potential for the development of specific areas and uplift of specific categories of tribal dominated areas excluding the north eastern tribal districts of the country. There are a number of constitutional provisions for the Protection of the identity and rights of sc; Articles 15, 16, 19(5), 23,29,46, 164, 343(M), 243 (ZC), 244,275, 330, 332, 334, 335, 338-A, 339, 342, and 365 (25) besides the 5th and 6th schedules appended to the constitution. PESA has not been implemented in Odisha for lack of Rules that the state government is yet to make. Committees formed with ST department director as chairman was without representation of tribal or women and incorporation of a few PESA provisions in the Panchayat Rrj was turned out to be not fruitful. State government had distorted PESA

grams Sabha rules; while a village to be taken as unit for grama Sabha the state government decided it as a Panchayat. There is a conflict in the state over the community right over bamboo as a MFP. There are conflict between PESA and FRA on MFP. While PESA ensures ownership of MFP to communities living in scheduled areas FRA extends this right to tribal and non-tribal forest dwelling communities even in non-scheduled areas. This controversy has been further fueled as the right to the tribals (right over bamboo) shall deprive elephants their food. There are 27 schemes for PESA Areas in odisha, of this 16 are related to education schemes at various levels and 5 for common property resources (CP-R). There is a tendency now that activists too are getting entangled in the legal framework. There are 17 legal compliance against PESA in Odisha; from PESA section 4 (a) to 4(m)(vi) & 4(n). Tribal population of Odiha is 22.8 percent of the state population – state population 4, 19, 74218 – tribal population 9590756. The state has 21 pockets of Integrated Tribal Development Projects ITDPS and ITDA –agencies, 46 pockets of Modified Area Development Approach (MADA), 14 clusters and 13 pockets of Particularly Vulnerable Tribal Groups in tribal sub plan area and Odisha has Scheduled Areas and Tribal Advisory Councils.

Status of legal compliances against PESA in Odisha

CENTRAL PESA			**ODISHA PESA**	
#	**Section No**	**Provision**	**Section No**	**Provision**
1	4 (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;	.....	The state legislation of the Panchayats include OGPA, OPSA, OZPA, their corresponding rules for election, and administration etc.; and some other laws like The Odisha Vesting of Properties (in Grama Sasans) Act and Rules, Odisha Grama Panchayats (MFP) Administration Rules, 2002 etc.. Of these, OGPA, OPSA and OZPA have been amended in 1997 to incorporate the provisions of the Central Act, either partially or fully though these amendments do not exactly (directly) correspond to the religious practices of the local communities in Scheduled Areas except for some indirect references under section 5 (6) of OGPA. The state PESA rules are yet to be notified.
2	4 (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	S.3 (1) of OGPA	the state government may for the purpose of act by declaration notified in the gazette constitute any village or group of contiguous villages as a Grama and assign to such Grama, a name which shall be one of the villages comprised within the Grama. Village intervened only by forest areas, hill, streams, rivers and such other natural barriers, and lands not forming part of any village may be treated as contiguous villages.

3	4 (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;	S.4 (1) of OGPA	every Gram there shall be a Grama Sasan which shall be composed of all persons registered by virtue of the Representation of the People Act 1950 in so much of the electoral roll for any assembly constituency for the time being in force as related to the Grama, and unless the election commission directs otherwise, of the said portion of the roll shall be deemed to be the electoral roll in respect of the Grama
4	4 (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;	S.5 (6) of OGPA	in the Scheduled Areas, the Grama Sasan shall be competent to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and customary mode of dispute resolution consistent with the relevant laws in force and in harmony with the basic tenets of the constitution and human rights
5	4 (e) i	every Gram Sabha shall- 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;	S.5 (3) of OGPA	the Grama Panchayat shall have the power to b) identify or select persons as beneficiaries under the poverty alleviation or similar other programmes.
6	4 (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);	S.5 (3) of OGPA	Provided that every Grama Panchayat shall be required to obtain from the Grama Sasan a certificate of utilisation of funds by the Panchayat for the plans, programmes and projects referred to in, clauses consider and approve the annual budget of the Grama Panchayat including the supplementary or revised budget. Consider levy of all tax rates, rents and fees and enhancement of rates there.
7	4 (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;	Section 10(3-a) of OGPA	seats shall be reserved for the Scheduled Castes and Tribes in Every Grama Panchayat and the number of seats so reserved shall bear, provided that where the population of Scheduled Caste or, as the case may be, Scheduled Tribes in a Grama is not sufficient for reservation of any seat for the Scheduled Caste or, as the case may be, one seat for Scheduled Tribes shall be reserved in the GP
8	4 (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;	Section 6(6) of OGPA	notwithstanding anything contained in this section the Government may nominate to a Parishad in the Scheduled Areas persons belonging to Scheduled Tribes shall as have no representation in the Parishad

9	4 (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;	S.3 (6) (a) of OZPA	no acquisition of land for development projects and for resettling or rehabilitating persons affected by such projects shall be made under any law without prior consultation of the Parishad
10	4 (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;	S.3 (6) (a) of OZPA	no prospecting license or mining lease for minor minerals or concession for the exploitation of minor minerals by auction shall be granted under any law on or after the commencement of the Odisha Zilla Parishad (Amendment) Act, 1997, except with the prior recommendation of the Parishad.
11	4 (I)	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;	S.3 (6) (a) of OZPA	No prospecting
12	4 (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-	S.44 of the OGPA	Notwithstanding anything contained in any other law, in the Scheduled Areas.
13	4 (m) (ii)	the ownership of minor forest produce;	S.44 (2-b) of OGPA	the ownership of minor forest produce
14	4 (m) (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;	S.44 (2-c) of OGPA	Prevention of alienation of land and restoration of any unlawfully alienated land of the Scheduled Tribe.
15	4 (m) (v)	the power to exercise control over money lending to the Scheduled Tribes;	S.44 (2-d) of OGPA	Notwithstanding anything contained in any other law, in the Scheduled Areas.
v c	4 (m) (vi)	the power to exercise control over institutions and functionaries in all social sectors;	Sec 20 (5-i) of OPSA	Notwithstanding anything contained to the contrary of this Act, in the Scheduled Areas,
17	4 (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;	Sec 20 (5-i) of OPSA	no such direct provision under any state laws and the central Act itself may be made partly responsible for that as it provides for simultaneous/parallel power to the Grama Sabha and the PAL in some cases

Discussions

Amitab Bachan: Community is heterogeneous; therefore one community and their practices and needs cannot be used as common for arguments against all

KEY SUGGESTIONS & RECOMMENDATIONS

1. Review Kerala Panchayat Act and Municipality Act while discussions on PESA
2. Document all tribal culture, practices and management systems and enquire the merit of institutionalizing all these historically evolved practices.
3. Whether delimitation can be used to demarcate geographical boundaries of PESA Grama Sabha
4. Discussion should be made about PESA Section 4 (n) whether it shall end up as 'immunization of PESA Grama Sabha
5. Be watchful about distortion of PESA rules as in Odisha where instead of village as unit for Grama Sabha the state government decided it as a Panchayat.
6. Conflict between PESA and FRA on bamboo as MFP that community has rights over posed as depriving elephants their food.
7. Legal compliance against PESA in Odisha; there are 17 such compliances against PESA on key sections 4 (a) to 4(m)(vi) & 4(n)

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TECHNICAL SESSION VIII:

VALEDICTORY: TASKS AHEAD

10

Technical Session VIII:

Valedictory: Tasks Ahead

Chair: Dr. PP Balan

Comments from the Chair

This national seminar on PESA is the second consultation in KILA. This was on the basis that the first sitting pointed out the requirement for further clarifications. This two day seminar has shared vast experience and knowledge about the status of PESA in different parts of the country. It has also highlighted the PESA in Kerala context. This can help the drafting of Rules in the State. There are couple of objectives this exercise looks forward to. One of the objective is to make Oorukoottoman autonomous body-like Panchayats in Kerala. The ultimate aim is to make PESA a model in Kerala.

Summary of Discussion

1. There were discussions about the powers, strengths and weaknesses of PESA
2. That PESA is the fruit of peoples' struggles and not a mere piece of legislation gifted by government
3. Contradictions exists between PRIs and PESA – amendment is needed in Kerala Panchayat Raj Act and not in PESA
4. About the Tribal sub plan fund, utilization, scrutiny and monitoring is called for
5. Clear demarcation needed in using the term 'Grama Sabha'; PESA Grama Sabha and other several Grama Sabhas exists
6. PESA is getting entangled too much in legal matters

Valedictory Address: Mr. C R Bijoy

Kerala's unique feature is the extent to which democracy has penetrated the entire fabric of its system. In fact this is the only state where in a seminar of this proportion by KILA takes place with academic discussions that also has active participation of social activists even when tribal habitations are not yet notified as Scheduled Area. It was the British who, having failed to subdue the Adivasis unlike the mainstream population, provided for separate provisions in the form of Partially Excluded Areas (partially excluded from the purview of the laws of the British) and Excluded Area (excluded from the purview of the laws of the British).. In other words, the Adivasis continued as self-governing territories even though nominally part of the British Empire. These got incorporated in the Constitution under Article 244 as Fifth and Sixth Scheduled Areas.

In the case of Scheduled Areas, the Governors of the concerned States were given immense powers to modify existing laws and could make regulations in the Scheduled Areas to protect them and ensure good governance. The structure of PESA Grama Sabha makes it clear that the structures above should not encroach into the powers and functions of the Gram Sabha, and the structure above the Gram Sabha should be patterned on the Sixth Schedule. So far none of the States nor the central government have bothered to examine this; instead PESA where the centre of power is the Gram Sabha is fitted into a Panchayat Raj structure where the structures above the Gram Sabha is empowered and Gram Sabha literally has no power. This is conflicting. Moreover, even the mainstream Panchayat Raj is a diluted version of the 73rd Amendment and the 29 subjects that were to be transferred or devolved to the Panchayats in terms of funds, functions and functionaries, in most states have not been done. In this Kerala stands first in devolution in the country which provides it a great opportunity. The question that remains then is whether the State Assembly has the legislative competency to make an amendment to the State Panchayat Raj Act to extend PESA to the Scheduled Areas of the State incorporating Sixth Schedule provisions to the extent possible that includes primarily the structure of Autonomous District Council (ADC). Clearly the answer is a 'yes'.

Assam has notified 6 ADCs through State legislations (it has 3 other ADCs under Sixth Schedule) and the State of Jammu & Kashmir has created one ADC through State legislation. Besides Kerala, the States of Jammu & Kashmir, West Bengal, Uttar Pradesh, Uttarakhand, Tamilnadu and Karnataka are the States where Scheduled Areas have not been notified. The 10 States that have Scheduled Areas too have left out a number of habitations from its listing. Generally the Scheduled Area has to be at least coterminous with the Tribal Sub-Plan Area, The procedure for identification of the tribal habitation is now legally available in Forest Rights Act which can be followed in Kerala to ensure that missed out habitations in the current proposal are included. These habitations should be grouped appropriately to being separate compact districts. Or even where the area is not contiguous, it can still be a district, just as the Tripura Tribal Area Autonomous District Council. The geographical jurisdiction could include besides the revenue land, the forest land that falls within the jurisdiction of the village under FRA.

Legal homework includes the drafting of a clear amendment to the Kerala Panchayat Raj Act 1994 extending PESA to the Scheduled Areas of the State so that it is in compliance with all the provisions of PESA. Subject laws that fall within the subject matters of PESA are to be listed and those provisions identified that are not in accordance with the PESA provisions and amendments to make it comply with PESA provisions are to be formulated. It must also be kept in mind that PESA and FRA are both framed along participatory democracy, the next higher level of democracy to that of representative democracy which all are familiar with. Both these laws are applauded by various bodies including the official bodies as the erstwhile Planning Commission, the Administrative Reforms Commission of India etc as by far a superior higher form of governance. Interestingly and significantly the Ministry of Panchayat Raj had circulated three sets of amendments, for the Scheduled Area, the Tribal Area (Sixth Schedule Area) and

the general population in essence bringing all under an integrated frame of the fifth and sixth schedule governance provisions. The PESA powers of the Gram Sabha was proposed to be a separate Schedule 13 creating a new set of constitutional subject list besides the Central, State, and Concurrent list, called the Gam Sabha/Ward list that defines the subjects under the exclusive domain of the Gram/Ward Sabhas. Kerala that has experienced social and political reforms that democratized the society with its land reforms (though limited), people's planning etc has the best potential to absorb PESA in its real spirit in terms of even thinking in terms of bringing a state-wide governance reforms on the lines of PESA.

Vote of Thanks: Dr. Abey George

Fruitful two days of discussions on PESA. Good timing to have this national level sitting. in these two days there were experience shared from different parts of the country by activists. Had good review of the Kerala situation too. The context of possible implementation in short time in the State.

APPENDICES

Appendix 1

The Provisions of the 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.

APPENDIX 2

Appendix 2

Socio – Economic Status of 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) vizKoraga, Kattunayakan, Cholanaickan, 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). 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 settlements are without Anganwadis within the Ooru
- 13% have no reach of Anganwadis
- PESA is expected to cover - 2445 Ooru (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% MalaiArayan 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 as 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
- 0.88% 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%)
- 11163 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%)
- 13412 Persons between age group 45-59 (15.93%)

Basic Amenities

- 5158 Families – Landless (4.78%)
- 10374 Families – Houseless (9.60%)
- 44540 Families - Families residing in Dilapidated Houses (41.25%)
- 30894 Families – Partially Habitable houses (28.61%)
- 51551 Families - Without Sanitation (47.75%)
- 61098 Families – Un-Electrified Houses (56.59%)
- 29223 Families – Having students and not electrified (48.00%)
- 42601 Families – Having scarcity of drinking water (39.46%)

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, KurumbaPulayan, KaravazhiPulayan, PambaPulayan)	2954	Idukki
5	Kadar, (Wayanad Kadar)	2949	Kadar in Thrissur and Palakkad Wayanad Kadar in Wayanad and Kozhikode
6	Irulan, Irular	23721	Palakkad
7	Kanikaran, Kanikkar	21251	Thiruvananthapuram, Kollam
8	Kattunayakan	18199	Wayanad, Kozhikkode, Malappuram, Palakkad
9	Kochuvelan	38	Pathanamthitta
10	Koraga	1582	Kasaragod
11	Kudiya, Melakudi	785	Kasaragod
12	Kurichan, (Kurichian)	35171	Wayanad, Kannur, Kozhikode
13	Kurumans, (MulluKuruman, MullaKuruman, Mala Kuruman)	24505	Wayanad
14	Kurumbas, (Kurumbar, Kurumban)	2586	Palakkad
15	MahaMalasar	154	Palakkad
16	MalaiArayan (Mala Arayan)	33216	Idukki, Kottayam, Ernakulam, Pathanamthitta
17	MalaiPandaran	2422	Kollam, Pathanamthitta

18	MalaiVedan (Malavedan)	8149	Kollam, Pathanamthitta, Kottayam, Idukki
19	Malakkuravan	175	-
20	Malasar	3195	Palakkad
21	Malayan, Nattu Malayan, Konga Malayan (Excluding the areas comprising the Kasaragode, Cannanore,Wayanad and Kozhikkode District)	5917	Thrissur, Palakkad, Ernakulam
22	Malayarayar	1568	Sames as in Serial no 16
23	Mannan (to be spelt in Malayalam script in Parenthesis)	9780	Idukki
24	Muthuvan, Mudugar, Muduvan	23746	Idukki, Ernakulam, thrissur, Palakkad, Malappuram, Kozhikode
25	Marati	27824	Kasaragod
26	Palleyan, Palliyan, Palliyar, Paliyan	1464	Idukki
27	Paniyan	88450	Wayanad, Kannur, Kozhikode, Malappuram, Palakkad
28	Ulladan(Ullatan)	16230	Alappuzha, Kottayam, Idukki, Ernakulam, Thrissur
29	Uraly	11179	Idukki
30	Malavettuvan (in Kasaragod and Kannur Districts)	17869	Kasaragod, Kannur
31	Ten Kurumban, JenuKurumban	25	Wayanad
32	Thachanadan, ThachanadanMoopan	1745	Wayanad
33	Cholanaickan	124	Malappuram
34	Mavilan	30867	Kasaragod, Kannur
35	Karimpalan	14098	Kannur, Kozhikode, Wayanad
36	VettaKuruman	739	Wayanad
37	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
	Total	**4762**	**100.00**

Table 3: Extend Of Land Possessed by the Tribal families

Sl. No	Extend Of Land	Families	Percentage
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 of Scheduled Tribes of Kerala, based on the survey conducted jointly by KILA and STDD during 2008-2009].

List of Proposed PESA Areas in Kerala

#	District		Grama Panchayat/Municipality/Ward	Number of Ooru
1	Idukki	1.	Idamalakudy Grama Panchayat	28
2	Kannur	2.	Aralam Grama Panchayat – Ward No.VI	6
3	Palakkad	3.	Agali Grama Panchayat	73
		4.	Puthoor Grama Panchayat	63
		5.	Sholayoor Grama Panchayat	52
4	Malappuram	6.	Amarambalam Grama Panchayat	1
		7.	Vazhikkadavu Grama Panchayat	1
		8.	Kurulayi Grama Panchayat	16
5	Wayanad	9.	Tirunelli Grama Panchayat	14
		10.	Noolpuzha Grama Panchayat	212
		11.	Meppadi Grama Panchayat	53
		12.	Mullankolli Grama Panchayat	41
		13.	Muttil Grama Panchayat	97
		14.	Nenmeni Grama Panchayat	97
		15.	Ambalavayal Grama Panchayat	15
		16.	Muppenadu Grama Panchayat	10
		17.	Kaniyampetta Grama Panchayat	99
		18.	Kottathara Grama Panchayat	100
		19.	Meenangadi Grama Panchayat	104
		20.	Sulthan Batheri Grama Panchayat (Currently Municipality)	75
		21.	Pulpalli Grama Panchayat	134
		22.	Pozhuthana Grama Panchayat	26
		23.	Poothadi Grama Panchayat	150
		24.	Panamaram Grama Panchayat	182
		25.	Padinjarethara Grama Panchayat	63
		26.	Vellamunda Grama Panchayat	116
		27.	Vengapally Grama Panchayat	68
		28.	Vythiri Grama Panchayat	6
		29.	Edavaka Grama Panchayat	84
		30.	Mananthawady Grama Panchayat (Currently Municipality)	106
		31.	Thondarnadu Grama Panchayat	84
		32.	Tariyodu Grama Panchayat	79
		33.	Tavinjaal Grama Panchayat	91
		34.	Kalpetta Municipality	45
			Total	**2445**

Source: PESA -Panchayat Extension to Scheduled Area, Handbook, KILA 2016.

PESA (Panchayat Extension to Scheduled Area) in Kerala

District	Panchayat	Municipality	Ooru
Idukki	1	-	28
Kannur	1	-	6
Palakkad	3	-	192
Malappuram	3	-	18
Wayanad	23	3	2201
Total	**31**	**3**	**2445**

Source: PESA -Panchayat Extension to Scheduled Area, Handbook, KILA 2016.

Appendix 3

An Indicative List

1. *Report of MPs and Experts to make recommendations on the salient features of the law for extending provisions of the Constitution (73rd) Amendment Act, 1992 to scheduled areas*, 1994.
2. *Raising Standards* of *Administration in Tribal Areas,* Third Report of the Standing Committee on Inter-Sectoral Issues relating to Tribal Development, (headed by Dr. Bhalchandra Mungekar, Member, Planning Commission, with Secretaries of some key Ministries concerned with tribal development as Members), 2009.
3. *T*he 'Provisions of the Municipalities (Extension to the Scheduled Areas) Act 2001', 4
4. *National Advisory Council recommendations on PESA, 2012*
5. *Roadmap for the Panchayati Raj (2011-17): An All India Perspective*, 2011, Ministry of Panchayati Raj, Government of India.
6. Revised Note On Decentralised Governance in the North Eastern States (NE), Ministry of Panchayati Raj, Government of India, 19th March. 2010
7. Chapter 7, reviewing the Implementation of PESA in States with Schedule V areas, Ministry of Panchayati Raj.
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10. *Development Challenges in Extremist Affected Areas*, Report of the Expert group constituted by the Planning Commission, 2008
11. The Sixth Report of the Second Administrative Reforms Commission entitled 'Local Governance: An Inspiring Journey into the Future' (2007)
12. The 7th Report of the Second Administrative Reforms Commission 'Capacity Building for Conflict Resolution', February 2008;
13. Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, May 2011
14. Raghav Chandra Report on 'Land Alienation, Displacement, Rehabilitation and Resettlement' in the light of land and mineral provisions in PESA.
15. Faster, Sustainable and More Inclusive Growth. An Approach to the Twelfth Five Year Plan, Planning Commission, Government of India, October 2011
16. Report of the Working Group on Democratic Decentralisation & PRIs, Planning Commission and Ministry of Panchayati Raj, November 2006
17. No.N-39011/52/2009-PEAIS/Pol.II, *Panchayat Empowerment & Accountability Incentive Scheme (PEAIS)-Assessment of the States for 2010-11,* Ministry of Panchayati Raj, Government of India
18. D.O. No.M-11011//3/2009-P&C(AR) of Ministry of Panchayati Raj, Government of India on *Amendments to Article 243 of the Constitution for Strengthening the Local Bodies*, dated 17 March, 2010
19. *Status of Panchayat Raj. State Profiles*

Appendix 4

LIST OF PARTICIPANTS

Sl.No.	Name
1.	Mr. S M Vijayanand IAS, Secretary to Govt. of India, Ministry of Panchayat Raj, New Delhi
2.	Dr. P P Balan, Director, KILA, Thrissur
3.	Dr. Peter M Raj, Associate Professor, KILA, Thrissur
4.	Dr. J B Rajan, Assistant Professor, KILA, Thrissur
5.	Dr. Abey George, Faculty, TISS, Trivandrum
6.	Mr. S C Behar IAS, Chief Secretary (Rtd), Bhopal, Madhya Pradesh
7.	Mr. P V Rajagopal, Founder EKTA Parishat (Bhopal)&Secretary, CESCI, Madurai,Tamil Nadu
8.	Mr. Ashok Shrimali, Secretary, General Minor Mineral of People, Ahamedabad, Gujarat
9.	Mr. Ashok Chaudhari, General Secretary, Adivasi EKTA Parishad
10.	Mr. Ghyandhar Sashtri, Secretary. EKTA Kabir, Ratanpur, Chhattisgarh
11.	Mrs. Sandhaya Devi, Managing Trustee. EKTA Parishat Trust, Odisha
12.	Mr. Biredra Kumar, Secretary, Naya Sawera Vikas Kendra, Jharkhand
13.	Mr. Anil Kumar Gupta, EKTA Parishad, Bhopal, Madhya Pradesh
14.	Mr. Ramesh Sharma, National Convenor, EKTA Parishad, Jungpura A, New Delhi
15.	Mr. Deme Oran, Odisha
16.	Mr. Sunilkumar M, State Director, Land Se, TS & AP, Hydrebad, Andrapradesh
17.	Dr. C R Bijoy, '*Campaign for Survival and Dignity'* , Coimbatore, Tamil Nadu
18.	Adv. K.S.Santhakumari, President, Palakkad District Panchayat, Palakkad
19.	Mrs. T. Ushakumari, President, Wayanad District Panchayat, Wayanad
20.	Mr. M Geethanandhan, Co-ordinator, AGMS, Kannur, Kerala
21.	Mr. Sreeraman Koyyon, President, Adivasi Dalit Munneta Samithi, Kannur, Kerala
22.	Mr. Rajendra Prasad, President, Centre for Tribal Education Development Research, Attapady, Palakkad
23.	Dr.Jose Chathakulam, Centre for Rural Management, Kottayam, Kerala

24.	Mrs.Shamla Beevi, Centre for Rural Management, Kottayam, Kerala
25.	Mr. T. P. Harikumar, Freelance Researcher, Kawar, Goa
26.	Mr. E G Joseph, KILA Extension Faculty, Wayand, Kerala
27.	Mr. V K Mohankumar, KILA Extension Faculty, Kozhikode, Kerala
28.	Mr. Sanky D, Joint Director, State Audit Department, Trivandrum, Kerala
29.	Dr. Amithab Bachan, Asst. Professor, Dept. of Botany, MES Asmabi College, Kodungallur, Kerala
30.	Dr. M Surjith, Secretary, Pinarayi Grama Panchayat, Kerala
31.	Ms. P V Mini, Deputy Director, (Development Studies, KIRTADS, Kozhikode, Kerala
32.	Mr. Premanand BS, Deputy Director, Scheduled Tribe Development Department,Trivandrum, Kerala
33.	Mr. P.Y.Anilkumar, KILA Extension Faculty, Venganoor, Trivandrum
34.	Mr. P Hareendran, Asst. Professor, Dept. Rural and Tribal Sociology, KannurUniversity, Mananthavady Centre, Wayanad, Kerala
35.	Ms. M Nishamol, Research Scholor, Dept. of Applied Economics, CUSAT, Cochin, Kerala
36.	Ms. Megha Madhavan, Research Scholar, Central University of Kerala, Kasaragod
37.	Mr. Gokul, Research Scholar, Central University of Kerala, Kasaragod, Kerala
38.	Ms. Akihila S S, Research Scholar, Central University of Kerala, Kasaragod
39.	Adv. C K Sajira, KILA Extension Faculty, Kozhikode, Kerala
40.	Mr. Pratap Singh A S, Training Associate, KILA, Thrissur, Kerala
41.	Mr. Jiyesh C.S., Adivasi Gothra Mahasabha, Idukki, Kerala
42.	Mr. Janardhanan P.G., Adivasi Gothra Mahasabha, Idukki
43.	Mr. Jayakumar K, Adivasi Gothra Mahasabha, Wayanad
44.	Mrs. Sudha P.M., Adivasi Gothra Mahasabha, Attapady, Palakkad, Kerala
45.	Mr. Ramesh R, Adivasi Gothra Mahasabha, Wayanad, Kerala
46.	Mr.Ramakrishnan A C, 'Adivasi Kootayma', Wayanad, Kerala
47.	Mr. Rathesh T Gopi, State Secretary, Adivasi Dalit Munneta Samithi, Kerala, Kottayam,Kerala
48.	Mr. Saravanakumar D., Attapady, Palakkad, Kerala
49.	Mrs.Koyalipura Anil, Adivasi Gothra Mahasabha, Wayanad, Kerala

End