Decentralized Governance in Schedule V Areas and Empowerment of Women: Resolving Conflicts through Law

Suparna Jain
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Empowerment of Women:
Resolving Conflicts through Law

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Introduction

The Scholar of Peace Fellowships awarded by WISCOMP for academic research, media projects and special projects are designed to encourage original and innovative work by academics, policy makers, defense and foreign office practitioners, NGO workers and others. The series WISCOMP Perspectives brings the work of some of these scholars to a wider readership. The monograph *Decentralized Governance in Schedule V Areas and Empowerment of Women: Resolving Conflicts through Law*, the outcome of a special project conducted by Suparna Jain, is the eighteenth in the series of WISCOMP Perspectives.

In this study, Suparna Jain focuses on law as a potent tool of conflict resolution, especially when conflicts are ‘structural’ rather than manifest in nature. Typically, conflicts over resource control and management, especially in vertically stratified societies, often characterized by historical social inequalities, are not always manifested through overt violence. The congealed violence inherent in such situations can however find an overt outlet at any time and hence it is increasingly acknowledged that manifest as well as latent conflicts must form part of any conflict and security analysis. In this special project, the searchlights are on entitlements and resource allocation among India’s tribal people, most of who are traditional forest dwellers. The study examines the role of law as an instrument for gender sensitive settlements, in the context of contending claims and increasing debates about decentralization of control and management of economic resources. Consequently, this report feeds into larger discourses on environmental security, gender security, and methodologies of dispute resolution in a changing global scenario.

There has been a clear shift in the security discourse in the post Cold war era from a purely ‘military’ state centric vision to a more holistic one that includes issues of life and livelihood. Within these new security parameters, environmental security has emerged as an important constituent of the alternative discourses. There has also been an
increasing awareness that the discourse and politics of environmental security must be gender sensitive and should take into account the often-symbiotic relationship that a large number of women have with the eco system. This research has been undertaken in the backdrop of these changing formulations of security and a growing acknowledgement that genuine participatory democracy is a precondition of inclusive and sustainable security.

Issues related to environmental security become particularly salient in the context of India’s tribal population, particularly the scheduled tribes, many of which are traditional forest dwellers who have always had a symbiotic relationship with the natural resources of the forest. The so-called ‘scheduled areas’ where tribal populations reside and which fall under the Fifth Schedule of the Constitution of India include parts of Andhra Pradesh, Gujarat, Jharkhand, Bihar, Chattisgarh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The architects of the Indian Constitution felt that since these areas are inhabited by people who have over centuries evolved their own cultural ethos, a special system of administration needs to be put in place, which would not interfere with these traditional beliefs and practices. Despite the stated intentions, however, for all practical purposes, the control over forest land and resources remained with the State.

In this context, two pieces of legislations – the 73rd Amendment Act 1992, giving legal status to the Panchayati Raj system in India; and the provision of the Panchayat (Extension to Scheduled Areas) of 1996 – assume special importance. In many ways, the basis of genuinely participatory democracy became a reality for India in 1992 with the 73rd Amendment to the Constitution. This path-breaking legislation mandated that resources, responsibility and decision making be devolved from the Central Government to the lowest unit of self-governance, the Gram Sabha or the village assembly. In 1996, the provisions of this Act were extended to areas governed under the Fifth Schedule of the Constitution of India where tribal populations are predominant. The Provisions of Panchayats (Extension to Scheduled Areas) Act 1996 (hereafter PESA), is a radical law in as much as it paves the way for genuine decentralization of powers in the areas where
there is a substantial scheduled tribe population – particularly with respect to minor forest produce, management of minor water bodies, and control over local plans and their resources.

The 73rd Amendment also contained a mandatory requirement under it to reserve seats for women at all levels. As the study points out, though PESA does not specifically provide for reservation of seats for women, the corresponding State Panchayat Acts have made provisions to this effect. Suparna’s monograph focuses on the potential of PESA to empower tribal women in all decision-making processes, especially on issues related to access and control over natural resources.

Given the symbiotic relationship between women and natural resources, particularly in tribal areas, the empowerment of women has to be seen in the context of their level of decision-making relating to the use, access, and management of natural resources. This study explores how law can be used to facilitate this kind of empowerment while at the same time exposing how legal loopholes in even radical pieces of Legislation in combination with static social mores can be exploited to sometimes defeat the very purpose of the Legislation.

Observational data, focus group discussions, structured questionnaires, and interviews conducted in two districts of Rajasthan – Dungurpur and Chittargarh – which fall under the purview of PESA, form the methodological bedrock of this research. The principal researcher and her team lived in villages for more than two months and interacted with the target group, especially the women, to ascertain the spaces for women’s empowerment opened up by PESA. Some of the glimpses from the field are collated in the chapter titled Field Work Report, which attempts to move beyond mere legal analysis to capture everyday challenges for women whose life trajectories such Legislations supposedly seek to alter. What, for instance, stops tribal women from attending Panchayat meetings? To what extent are essentialist perceptions about women’s ‘intelligence’ a factor that inhibits genuine participatory processes even when women are legally mandated to be part of the formal decision-making bodies? These are some of the questions that emerge in the course of documenting the field studies.
that form the basis of this investigation, and the foundation for subsequent recommendations.

As the researcher points out, law as an instrument of conflict resolution has perhaps not received the attention it deserves. This study is an attempt to understand how a progressive law can bring in changes at the intersection of gender and human security and how field based observations can inform, sharpen, and nuance subsequent Legislations on the subject.

The WISCOMP Research Team
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Suparna Jain
Chapter I

1.1 Overview

The present study is an attempt to explore the potential of the Constitution of India and ancillary Central and State Laws conferring extensive powers with village assemblies in tribal areas to plan and manage their natural resources as a tool to empower tribal women. The study seeks to reconcile the day-to-day problems besetting tribal women in participating in village assemblies and in exercising control over their local natural resources using the laws for decentralized governance in tribal areas.

1.2 Background and Context

One of the most significant changes in the development-thinking world in the past few decades has been the shift in the discourse on governance. For a long time, it was believed that power and decisions for a local area should be centralized in order to plan better. However, the experience from decades of centralized planning was disillusioning as most often the plans made were removed from the local realities of the areas and were oblivious to the needs of the local people for whom they were made in the first place. Voices of discontent grew, as did the demand for involving local people. It was increasingly felt that to make a democracy work, planning had to necessarily be participatory and decision-making had to be vested with local people.

This change in perception was adopted in the Indian administrative system by way of an amendment to the Constitution in 1992. In this amendment, a new part was added to the Constitution, conferring constitutional status to Panchayati Raj Institutions (PRIs), which hitherto were mentioned only in the Directive Principles of State Policy. As a result of this amendment, it became mandatory for all state governments to not only ensure that they set up Panchayati Raj Institutions in their states but also confer upon such institutions the autonomy and powers as envisaged in the Constitution. However, the provisions of this amendment excluded from their purview the areas
specified in Schedule V to the Constitution. For such areas, it was provided that special provisions be passed by the Central Government. Accordingly, in 1996, a central law by the name of ‘Provisions of Panchayat (Extension to Scheduled Areas) Act’ (PESA) was passed. This Act laid down directions to state governments for setting up of Panchayati Raj Institutions in tribal areas across the country, as well as certain special powers that had to be vested with such institutions. Amongst these powers, the following three were the most notable:

(a) Mandatory reservation of seats for women in all tiers of Panchayat Institutions.
(b) Transfer of ownership of minor forest produce to village assembly.
(c) Power to plan and manage minor water bodies.

PESA has laid the foundation stones to enable decentralized and participatory governance in India. This foundation has since been taken forward by a number of government orders, rules and notifications. The most notable amongst these have been the creation of a large number of village level user groups formed under various development programs. These groups include Village Forest Committees, Water User Committees, Watershed Development Committees, and various self-help groups amongst others. Together, PESA and the various developmental schemes have created a solid structure to build a truly participatory democracy. However, much needs to be done to realize the vision of empowering people at the grass-root level.

One of the most critical need of the hour is to involve women in this process. Traditionally, women have been limited to the roles of tending to the family and hearth, while the male members take decisions for the household as a whole. However, it is now widely recognized that men and women have different gender needs due to which decisions taken without consultation and participation of women have an adverse impact upon their livelihoods. Further, in the Indian context, rural women share a unique symbiotic relation with land, water and forests and depend heavily on these resources for survival. Thus, it becomes essential that any decision on natural resources management and development planning must necessarily involve women. Under the present panchayat system, though there are Constitutional and legal requirements to reserve seats for women to ensure their participation, these provisions have failed to ensure meaningful participation of
women in decision-making. Not only is women’s participation in panchayat meetings insignificant, but also the social and cultural taboos often deny women the opportunity to speak up in such meetings.

In this regard, the Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA), conferring sweeping powers relating to developmental planning and natural resources management on the Panchayati Raj Institutions and making legal provisions to ensure involvement of women in panchayat meetings, can play a significant role. The present project is an attempt to explore this potential of PESA and other national and state laws to increase women’s say in planning and management of natural resources around which their livelihood revolves.

1.3 Rationale

Empowerment of women has been a subject that has received substantial attention in the development circles. However, greater emphasis has been laid on empowering women through education, awareness generation, and involving women in paid work. One aspect that has been relatively unexplored is using law as a tool to bring about change. A study of this nature is essential, as traditionally, law has limited its role to merely reserving seats, leaving the executive with the duty to deal with all the problems that come in implementing the law. However, such an approach has time and again proven to be insufficient. There is an unequivocal need for the legislature to take all necessary steps to smoothen the road for the executive. In the case of empowering women, this becomes even more critical as women are most affected by policies on use of natural resources, and their voices need to be factored in decision-making at all levels. To illustrate how law can further empower women, reference to an order of the Uttar Pradesh government would be instructive. The order bars gram pradhans from letting their husbands interfere in their official work. The list of things that husbands of gram pradhans cannot do include entering their wives’ offices except for urgent work, taking part in village panchayat meetings, accepting memorandums from villagers, etc. There is a need to introduce other such innovative mechanisms in law that can safeguard the authority of women. It is this need that has precipitated the present study.

The 73rd Amendment and PESA are the first steps in involving women in planning, policy formulation and governance. However, a mere representation in local self-government cannot by itself change the
traditional patterns of socio-economic and political structures in villages. Until solutions to overcome traditional perceptions of women’s role in society are found, mere reservation of seats would be of little use³. Solutions to this effect undoubtedly involve changes primarily in the society, for which proactive steps are required. However, coupled with efforts to this end, there is a need to look for possible solutions in the laws relating to functioning of the PRIs through the rules and the byelaws that make law effective in the field. Further, solutions in laws should not stem from the bureaucracy based upon their perception of the issues. Instead, solutions need to reflect, voice and address the issues that are faced by women in their day-to-day lives. A truly participative and successful democracy would be one which looks for answers from the people who are actually struggling with them and not one which thrusts solutions based on a third person’s perceptions of the problem.

Besides, in view of the unique powers of ownership, use, and control that have been vested with the local self-government under the PESA, it becomes crucial to assess the role of women in the decision-making process. There is a definite need to involve women in control and regulation of the local natural resources and in development planning as all the decisions made in this regard have a very significant impact on their lives. Also, the right to have a say in decision-making is the first and one of the very crucial indicators of empowerment of any strata of society.

1.4 Key Research Question and Scope of the Project

It is in this context that the present study has sought to assess the impact of the 73rd Amendment to the Constitution and the PESA, on the empowerment of women in the state of Rajasthan. The key research question were:

(a) What are the problems being faced by tribal women in the study area in participating in panchayat meetings and exercising control over decisions for managing two key resources over which extensive powers have been vested with the Gram Sabha under PESA viz. minor forest produce and minor water bodies.

(b) Based upon the above fieldwork, what are the possible changes that need to be made in the legal provisions for panchayat and other bodies for decentralized governance.
Specifically, the study has sought to:

- Firstly, review all relevant laws, Constitutional provisions, the relevant State PESA and other subject matter like state laws vis-à-vis the provisions that are likely to affect women;

- Secondly, bridge the information gap as far as law is concerned through legal literacy camps as one of the major bottlenecks faced by women is lack of information on their rights and duties;

- Thirdly, understand and document the problems that women face at the field level in operation of the law;

- Lastly, to look for possible legal measures that can be undertaken to make law work for the women, based on the experiences of women. Such legal measures could include suggestions for possible safeguards that can be introduced in law through framing of rules, byelaws and administrative orders and other subordinate legislation to operationalize law on the field.

1.5 Methodology and Design

Project was divided into four phases:

1.5.1 The First Phase – Secondary Data Collection: In the first phase, various legislations, rules, orders, resolutions relating to forests and water sector, etc. were collected through literature review, law library and archival research. This was essential to define and refine the key legal issues, review the criteria for appraisal as well as to finalize the selection of the specific villages where fieldwork would be conducted.

1.5.2 The Second Phase – Sampling Design and Survey: The second phase focused on the selection of village for the study. The criteria for selecting study sites was: a) Areas where forest and water management were of critical concerns; b) Presence of active NGO/CBO on the subject of the study; c) Areas where women have successfully managed to assert themselves. The survey was conducted in a number of villages identified from two tribal blocks each in one district of the State of Rajasthan. The findings have been based on observational data, focused group discussions, structured legal questionnaires, interviews and interactions with non-government agencies, elected representatives, and women’s groups that are active in the selected villages. Further, the checklist of legal issues, identified through consultations and secondary literature review in the first phase, was also compared with the
contemporary legal constraints faced by the local populace. The checklist was developed in the context of how different ‘women’ perceive hindrances in participating in panchayat meetings and in asserting control over forest and water resources. Based on these perceptions, an effort was made to seek those elements in the women’s viewpoint that could potentially lead to empowerment, equity and democracy (as defined and understood by the women themselves). To this end, the surveys conducted were in consultation and cooperation with active NGOs, individuals, women’s groups and the concerned line departments of the states. Amongst the women, a questionnaire was prepared with pertinent questions that needed to be asked. In all the study villages, the local NGOs helped in collecting all the women at a common spot within the village. All women in the villages, irrespective of age, were consulted. In every village, there were about 30-40 women who came forward for the meetings. All of them were interviewed individually as well as collectively. Further, when the legal literacy sessions were carried out, it was ensured that all women were present. Case studies were conducted on the existing women panchayat leaders to ascertain what enabled them to emerge in their position and what barriers they faced.

1.5.3 The Third Phase – Analysis and Inferences: In this phase, the primary and secondary data collected were analyzed for the objectives of the study within the framework of the conflicts as actually existing on the field level and as perceived by these stakeholders themselves.

1.5.4 The Fourth Phase – Draft Report and Finalization of the Study: The fourth phase involved the preparation of the draft and finalization of the report.

1.6 Structure of the Report

The following report discusses the main findings of the project, which is divided into eight chapters. Chapter II describes in brief the underlying conceptual framework of human security, gender, empowerment, and women’s dependence on water bodies and on forest based activities and the role of women in Panchayati Raj Institutions. Chapter III traces the mandate for decentralized governance in India, PESA and decentralized governance in the study state of Rajasthan, focusing on the envisaged role of women in these statutes. Chapter IV, V and VI explain the forest and water laws in the state of Rajasthan to identify the legal spaces that can be used to empower women. Having identified
and discussed the law, Chapter VII goes on to discuss the field reality and the day-to-day problems that women are facing in participating in panchayat and other institutional groups as well as participating in decision-making. Based upon the constraints so identified, Chapter VIII discusses the potential legal strategies to increase women’s participation in planning and management of forest produce and water bodies.

Notes:

1 The PESA is one of the most radical laws passed in the legislative history of independent India in as much as it paves the way for genuine decentralization of power to the grassroots through a participatory local self–rule model of development. The PESA provides for involvement of Panchayati Raj Institutions in 13 broad areas of developmental planning and natural resource management. Of these, two of the most significant areas over which sweeping powers have been conferred on PRIs are water and forests. With respect to water, the PESA provides that the “Planning and management of minor water bodies is to be vested with panchayats at an appropriate level” while with respect to forests, it provides that “the ownership of minor forest produce is to vest with the gram sabha”. When these two provisions are seen in conjunction with the other general powers vested with PRIs under PESA viz. identification of beneficiaries for social schemes, control over all institutions and functionaries in the social sector, and control over all plans including tribal sub-plans and the provision for involvement of women in panchayats under Part IX of the Constitution of India, there appears tremendous scope for women to assert control over access and use of these two resources.

2 Though the PESA does not specifically provide for reservation of seats for women, the Constitution of India and State Panchayat Acts passed in consonance with PESA have made provisions to this effect.

3 They Call Me Member Saab: Women in Haryana Panchayati Raj; MARG; 1998.
Chapter II
Conceptual Framework

Since the study focuses and centers around empowerment of women as a means to ensure human security for them, the starting point of the research was to develop an understanding on the concepts of ‘human security’, the concept of ‘empowerment of women’, the relation and dependence of tribal women on minor forest produce and minor water bodies and the significance of the role of women in Panchayati Raj Institutions. The present chapter details the studied literature, discussing in brief the theoretical underpinnings for the above-mentioned concepts as background information for the study.

2.1 Women and Human Security

The urgent need to ensure the security of all human beings, especially women, forms the backbone of the present study. The following paragraphs examine the parameters of human security in an attempt to understand the significance of ensuring security in the lives of tribal women.

The concept of human security, as defined by the United Nations Special Commission on Human Security, is “protection of the vital core of all human lives in ways that enhance human freedom and human fulfillment. It means not only fundamental freedoms but also protecting people from critical and pervasive threats and situations. It also means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity. Human security in its broadest sense embraces not only absence of violent conflict but also encompasses human rights, good governance, access to education and health care”.

The concept of human security and what it entails is dynamic and has evolved over decades, particularly in the post Cold War period. While initially human security was seen in terms of food, clothing and shelter, its ambit is now much wider and goes beyond material wealth and looks at people’s lives and livelihoods in a holistic manner. It recognizes that people are the most active participants in determining their well-being and that empowering people by strengthening their abilities to
act on their behalf is instrumental to human security. Thus, the emphasis now is more on sustainability and socio economic rights of the people. In fact, this widening of understanding of security is even visible in the shift in the interpretation of Article 14 to the Constitution of India which grants the right to life to all Indian citizens. While in the early years after independence, this provision was interpreted by the courts, particularly the Supreme Court as being limited to the literary meaning, its ambit is much wider now and includes not only the first and second generation rights but also the collective third generation rights to human security\(^5\).

In relation to tribals, the Commission on Human Security observes that access to natural resources without any threat is one of the most important measures for ensuring security, since the livelihood of these people is dependant upon natural resources. The Commission substantiates this argument by taking the case of tribals in India. It observes that in some states in India where marginalized groups obtain upto 84 per cent of their fodder from common lands, degradation of these common lands forces people to migrate to even more degraded lands in search of timber and non timber forest produce which in turn leads to a decline in the household income and consequently their level of security. The impact of such environmental degradation is borne more by women who are forced to walk further and further to collect wood and water. As a result, they have less time to engage in activities that can generate income or enable them to overcome their marginalization. Also, the time taken up in the struggle to survive places further limits on their limited resources and energy to participate in household and community decision-making processes.

Discussing the gender dynamics of human security, the report points out that concerns for the human security of women has been for long an area of much debate and discussion, especially in the context of access and control over resources. It then goes on to recognize that women are often denied the access to critical resources such as credit, land and inheritance rights, reflecting the effects of gender inequalities in many societies and that gender can have an enormous impact on economic insecurity, especially in tribal societies where women have a much lower status than men. The Commission thus prescribes empowering women with livelihoods through participation in governance processes as an area of critical concern for not only their economic security but also that of their families.
In view of the above understanding, the central objective of the present project is to safeguard and strengthen the human security of tribal women in India, especially with respect to control over natural resources, which, as strongly asserted by the Commission, form the core of a tribal woman’s life. Having said that, the key to achieving this objective is to empower women. Recognizing this, the next section discusses the meaning of the term ‘empowerment’ and what it entails in terms of gender dynamics.

2.2 Gender and Empowerment

The word ‘empowerment’ has been one of the most debated concepts in gender discourse with varying definitions being put forth by different authors. However, at the root of the idea of empowerment is the concept of ‘power’. While some authors have defined empowerment of women as “a continuum of several inter-related and mutually re-enforcing components such as awareness and capacity building leading to greater participation, to greater decision-making power and control, and to transformative action”\(^6\), others such as Rowlands (1995) have defined it in terms of not only opening up access to decision making, but also in terms of inclusion of processes that lead people to perceive themselves as being able and entitled to occupy that decision-making space.

Despite the disagreement on the definition of the term, a key aspect of empowerment is women’s participation in formal political structures. This was recognized as one of the critical areas of concern in the Beijing Platform for Action, Women in Power and Decision-making. Further, in recent years, the empowerment of women has been discussed in terms of involving women in decision-making processes, especially decision-making in the field of environment and natural resource management.

In this regard, the UN Conference on Environment and Development (UNCED) Agenda 21 mentions that women’s advancement and empowerment in decision-making, including women’s participation in “national and international ecosystem management and control over environmental degradation” is a key area for sustainable development (quoted in Wee and Heyzer, 1995:7). Further, the Copenhagen Declaration of the World Summit on Development (WSSD) declared that empowering people, especially women, to strengthen their own capacities should be the main objective of development, and that
empowerment requires full participation of people in the formulation, implementation and evaluation of decisions determining the functioning and well being of societies.

Over the years, several tools such as micro credit, self-help groups, etc. have been identified and experimented with to involve women in decision-making. Amongst these tools, one of the most significant tool to support women’s empowerment has been the promotion of the participation of women in formal politics through reservation of seats in elections. The rationale for such reservation has been the transfer of power to local government which has the potential to create spaces at the local level for women as political actors.

Further, in recent years, a need has been felt to ensure that all international, national and local policies, especially those pertaining to natural resources, are gender neutral and address women’s practical and strategic gender needs. This is critical as women have a closer connection (through their role as farmers and as collectors of water and firewood) with their local resources and often thus suffer most directly from environmental problems. Further, women’s detailed knowledge of the natural environment, for instance, the uses of different tree species, can be a valuable asset to projects, as can their time and labour. Also, the interests of men and women are not always identical, it has to be ensured that women are consulted and involved so that they benefit from various developmental projects.

The present study attempts to integrate these two needs of building women’s interest into policies of natural resource management through their increased involvement in participation in village level politics using the provisions in law. Before going into how law can be used, it is essential to understand tribal women’s dependence on natural resources, especially on forest and water, and the level of women’s say in formal village level decision-making, especially in relation to these two resources.

2.3 Women in Forestry

Forests and forest-based activities form a vital core in the lives of tribal women in India. It has been estimated that almost 85 per cent of rural women still derive their livelihoods from land and forest based activities and any situation that causes deterioration of natural environment or that adversely affects their access and control over natural resources
has a deep impact upon their lives.\textsuperscript{11} The inextricable link between women and their dependence on forests specifically is further exemplified by movements such as the Chipko Andolan,\textsuperscript{12} which have emerged mainly in the hills or tribal communities, where women’s role in agriculture is primary and visible. It has been found that forestry activities not only comprise the primary source of livelihood for tribal women but also that the status of women in families is dependent upon the availability of natural resources in general and forests in particular in the local vicinity. Thus in commercialized villages which lack natural resources, women’s relative status is lower than that of women in well forested villages. This is so because women’s contribution to subsistence and cash income of the household is higher in villages close to natural forests (ILO 1985; ILO 1986). A study of Orissa and Chattisgarh, tracing the link between women and forests, has produced stunning results. The study found that in areas which were heavily forested a few decades back, the distance required to collect forest products has increased four-fold in twenty years (Fernandes and Menon 1987: 15). The receding tree line has meant that only adult members can now go to the forest for collection. Diminished supplies have forced the women members to cut down on their consumption, as they must market a greater proportion of their collection (Fernandes et al 1988: 116,124). This decline in women’s consumption has led to increased drudgery and to a deterioration of their public health. It was also found that deforestation and preference to monoculture has severely affected the availability of minor forest produce such as medicinal herbs which were available in plenty in the past. This in turn has led to more incidences of night blindness, dental problems, anaemia, and other diseases. Another Orissa based study on dependence of tribal women on forests found that forest resources being crucial to women’s economy (food, fodder, fuel and herbal medicines), degradation of forests in the area hit women harder in terms of increased workload, poor nutrition and deteriorating health. Marked differences are also visible between men and women regarding the species of trees that should be planted. It has been found in a study that men preferred income-generating varieties such as fruit and timber trees while women preferred fodder and fuel species.\textsuperscript{13}

It has been said that women have four distinct occupational roles in forestry: (a) gathering, (b) wage employment, (c) management, and (d) production. As gatherers, women are mainly involved in collection of firewood for cooking; minor forest produces such as fodder and grass; raw materials like bamboo, cane and bhabbar grass for artisan-
based activities; leaves, gums, waxes, dyes and resins; and many forms of food, including nuts, wild fruits, honey, and game. Out of these forestry activities, collection of minor forest produce provides for a valuable flow of subsistence and cash. It also has a direct impact on not only the status of women in the family but also on the availability of food and nutrition, and ultimately the family’s health.

However, despite the critical significance of forests and minor forest produces in the lives of tribal women, laws and policies relating to managing these resources have continued to ignore women. Further, not only has the legislature ignored women, at the grass root level also the women have been at the backseat of all decision making processes involving minor forest produce. A study on Joint Forest Management,\textsuperscript{14} for instance, has found that women’s input at higher levels, in planning or project management has usually been minimal as a result of which women’s interests are ignored. To illustrate, there are many instances where village authorities have closed off areas to encourage growth of trees, and in doing so have cut women off from their major supply of fuel wood. Some of the common problems faced by women are lack of information about rights, nationalization of minor forest produce amongst other social hindrances. Often women are not aware of what they can collect from forests, which leads to harassment. Further with nationalization of minor forest produce, forest produce has to be sold to the forest department only, which has an inverse impact upon the women’s incomes.

2.4 Women and Minor Water Bodies

The significance of women’s control over water and water bodies is best exemplified by the fact that women in Asia, it has been estimated spend nearly 4-7 hours per week collecting water\textsuperscript{15}. Women’s role in water management ranges from being providers of water for home, managers of water at community level and guardians of family health. It has been claimed in a World Bank report\textsuperscript{16} that ‘women who are trained to manage and maintain community water systems often perform better than men’. It has been pointed out that the success of any irrigation intervention ultimately depends on the willingness and ability of the system’s final users to use the irrigation water effectively and efficiently. The gender division of labor, different responsibilities, and inequalities between women and men mean that women and men often have different incentives to invest time, labor and capital in irrigation and related initiatives. Thus any planning and management of minor water
bodies for irrigation or any other purpose should necessarily involve the women. As in the case of minor forest produce, women have been largely isolated from decision-making process as their voice is rarely heard as forcefully as that of men. The key decisions on which women should be consulted include: the siting of water facilities, choice of technology, the selection of pump caretakers, water committee members and other personnel and the choice of management of the financing system. Till date, women’s involvement in water projects has remained largely limited to voluntary construction work or as water committee members in stereotyped roles of fundraising, collecting fee, health and hygiene or cleaning. It is high time that active interventions (legally and socially) are made to involve of women in actual planning and management of the water bodies on which their lives are so critically dependent.

2.5 Women in Panchayats

The absence of women in political scenario in India is self-evident. Statistically, even though women constitute almost half of the electorate in the country, they continue to occupy less than 10 per cent seats in the Parliament and state legislature\(^{17}\). The reasons for this conspicuous absence of women from the political arena include social and cultural constraints, division of work within the household entailing excessively long hours of work, the prevailing patriarchy and societal division of labor and lower educational levels amongst women.

Efforts to bring women into active forefront of politics, especially at the village level have been undertaken (though without sufficient drive) ever since India’s independence. The first major attempt to include women was through the provisions of right to equality as a Fundamental Right in the Constitution\(^{18}\). Subsequently, more positive steps towards inclusion of women, especially tribal women, into village level decision-making were taken through the Constitution (73\(^{rd}\) Amendment) Act of 1992 (see Appendix I for details on the Amendment Act). The 73rd Amendment to the Indian Constitution for the first time in the history of Indian polity, provided for a *minimum* number of seats and political offices in the panchayats for not only Scheduled Castes (SC), Scheduled Tribes (ST) and Backward Classes (BC) but also for women in general and for women belonging to SC, ST and to BC.

Though reservation was perceived as a form of re-distributive justice, in practice it has ensured the presence of more women in formal politics
but has failed as a tool to really empower women. Perceptions about women’s inability to take decisions are still persisting. This is evident by the result of a study conducted by Lieten and Srivastava in Uttar Pradesh panchayats which revealed that nearly 40 per cent of the interviewed women shared the general perception that they (women) were incapable of participating in decision-making due to lack of literacy and of knowledge of panchayat affairs. In fact, even where women have been elected as panchayat heads, they have to continuously grapple with hurdles in performing their duties and exercising their rights. Some of the problems cited by women Sarpanches in a conference of Women Panches of Rajasthan include lack of technical information, changes in the proposals sent by ward panches at higher levels, obstruction of work of the ward panches by the government officials, lack of interest and support by government officials, overruling of the suggestions given by women in gram sabha meetings and non-consideration of suggestions of women representatives in quorum meetings. Another common phenomenon is the usurping of power of female panchayat heads by the male members in their families. It has been observed in several cases that male family members, mostly husbands conduct village meetings and take decisions while the women members are mere figureheads. In a study conducted by Institute of Development Studies, Lucknow, it was found that 40 per cent of the total of the 20,000 women Gram Pradhans in the state were illiterate and had hardly stepped out of their homes. In Etah District in western U.P., a women pradhan had not attended a single meeting since 1995. Villagers referred to her husband as “pradhanji”. Another woman pradhan in Azamgarh was given the impression that her husband was actually the pradhan and her job was merely to sign the papers as his wife. Further, there are also instances where the family has been instrumental in preventing women from filing their nomination papers in spite of reservation. 

Further, data on female elected members who do attend meetings also shows that women have had little impact on policies as they tend not to speak in meetings. It is thus felt that increasing the numbers of women in decision-making positions in formal political power does not itself translate into greater empowerment if women. Quantitative measures of women’s participation in politics are inadequate as measures of women’s empowerment. Measures to increase the quantity of women representatives needs to be accompanied by measures to improve the quality of participation. It is in this context that the present study seeks
to study the spaces created for involvement of women in managing minor forest produce and minor water bodies using the radical powers for planning and management of local developmental decisions including those over natural resources with Panchayats under the Panchayat (Extension to Scheduled Areas) Act of 1996 in the state of Rajasthan.

2.6 Gender Differentials in Environmental Dependence

It is only in the last decade or so that it has been formally recognized that women ‘play an essential role in the management of natural resources, including soil, water, forests and energy... and often have a profound traditional and contemporary knowledge of the natural world around them’ (World Bank, 1991) and that “the exclusion of women from environmental projects – through outright neglect or belief in the gender neutrality of projects – would be a recipe for project failure” (Joekes, 1994).

Green (1995) has argued that gender differentials in environmental dependence stems from women’s:

- role as farmers, and as collectors of water and firewood, which accounts for their close connection with their local environment and their greater (vis-à-vis men) suffering from environmental problems;
- detailed knowledge of the natural environment, for example the uses of different tree species, as well as their time and labor; and
- different interests from those of men, giving rise to need to their separate consultation and involvement.

Forests and forest-based activities form a vital core in the lives of rural women in developing countries. Thus any activity that alters women’s access to natural resources—whether it is land, water or forests, has a direct effect on the level of social status, incomes and in turn their nutrition and health.

Notes:


5 First-generation human rights deal essentially with liberty. They are fundamentally civil and political in nature and serve to protect the individual from excesses of the
state. First-generation rights include, among other things, freedom of speech, the right to a fair trial, and freedom of religion.

Second-generation human rights, on the other hand, are related to equality and are fundamentally social, economic, and cultural in nature. In social terms, they ensure equal conditions and treatment to the different members of the citizenry.

Finally, third-generation human rights focus essentially on fraternity and, in generic terms, can be seen as rights of solidarity. They cover group and collective rights such as right to self-determination, right to economic and social development, right to natural resources, right to communicate, and right to participation in mankind's heritage (source http://en.wikipedia.org/wiki/Three_generations_of_human_rights; last accessed on 16.12.2005).


7 Micro credit has been one of the main tools used to empower women. Under micro credit schemes, credit is extended to women to run enterprises at subsidized rates, the rationale being that economic independence has a long term gain of giving women more control over their lives, money and decisions. One of the most successful examples of micro credit schemes has been the Grameen Bank in Bangladesh.

8 Self help groups work on the principle of strength in collective bargaining. Women are organized into groups so as to enable them to have a better bargaining power, to enable more effective division of labor, and to inculcate self-independence and self-sufficiency. A leading case study for self help groups is Self Employed Women’s Organization (SEWA) in India.

9 Promotion of women’s involvement in formal politics is perhaps one of the best tools of empowerment as it enables the mainstreaming and involvement of women in formal legal set-ups.


11 Saxena, N.C.; Women’s Empowerment and Natural Resource Law in India.

12 Chipko Andolan originated in the Himalyan Ranges in Western Uttar Pradesh as an attempt to prevent deforestation by people covering the trees with their bodies to prevent their cutting.

13 Walter Fernandes, Geeta Menon and Peter Viegas; Forests, Environment and Tribal Economy; ISI, Delhi, pp. 311.

14 Sarin, Madhu; Disempowerment in the Name of Participatory Forestry: Village Forests in Joint Forest Management in Uttarakhand; Forest, Trees and People Newsletter 44.


17 The State of Panchayats: A Participatory Perspective; PRIA.

18 Article 14 to the Constitution of India conferring equality to all.

20 Proceedings of a conference organized by an NGO ‘Asth’ in Rajasthan.


Chapter III
Decentralized Governance: The Legal Framework

3.1 Decentralized Governance in India: Constitution 73rd Amendment Act of 1992

India has a long history of decentralized governance dating back to the ancient times. However the present system of decentralized governance has its roots largely in the colonial system of administration (for a history of Decentralized Governance in India, see Annexure II). In the post-independence context, Constitutional Amendment Act, passed on 24 April 1993, marks a landmark in decentralized governance. This Amendment Act is significant for a number of reasons, the prime-most being that it confers Constitutional status on the Panchayati Raj Institutions (PRIs). Further, the amendment envisages the establishment of a democratic decentralized development process through people’s participation in decision-making, implementation and delivery. To achieve this end, it spells out the broad realm of powers, duties and responsibilities of the Panchayats. These include (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice. In order to achieve this objective, the Constitution provides for devolution of powers and responsibilities upon panchayats at appropriate levels. 29 subjects listed in the Eleventh Schedule of the Constitution have been identified for devolution to the PRIs. For the purpose of the present study, the most significant functions that are sought to be devolved under the Eleventh Schedule are minor irrigation, water management and watershed development, social and farm forestry and minor forest produce.

Another very significant feature of the 73rd Amendment to the Indian Constitution is that for the first time in the history of Indian polity, the Act provided for a minimum number of seats and political offices in the panchayats for not only Scheduled Castes (SC), Scheduled Tribes (ST) and Backward Classes (BC) but also for women. In the context of meager representation of women in the National and State legislatures vis-à-vis their population, reservation of not less than one-third of the
total number of seats and posts of chairpersons of panchayats should be considered a significant landmark in the process of political empowerment of women. This reservation particularly significant, as women continue to occupy less than 10% seats in the Parliament and State Legislature even though they constitute almost half of the electorate in the country. However, it has been pointed out that one of the shortcomings of the Amendment has been the provision for allocation of reserved seats by rotation. It has been argued that the provisions in the Amendment for reservation of seats by rotation to different constituencies would imply that a woman or a SC/ST elected to a Panchayat will normally have a term for five years with no prospect for re-election.

The Constitution 73rd Amendment Act does not automatically extend to the Scheduled Areas in the Country (for a history and description of Scheduled Areas in the country, see Annexure I). Instead, Article 243 M of the Amendment Act especially provides for extension of the provisions of Part IX of the Constitution to such tribal and Scheduled Areas by way of a law enacted for this purpose by the Parliament. To extend the provisions of Part IX of the Constitution to the Scheduled Areas in the country, a committee was set up by the Parliament under the chairmanship of Dilip Singh Bhuria to make recommendations on the essential powers/functions Panchayats in Scheduled Areas should have in view of their unique socio-economic conditions. It was on the recommendations of this committee that in 1996 a special law called Panchayat (extension to Scheduled Areas) Act, 1996 (PESA) was passed by both the Houses of Parliament.

3.2 The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996

This Act extends Panchayats to the tribal areas of eight States, namely Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan. The PESA is a landmark law in the Indian legislative history. It is an unprecedented and a radical law in as much as it paves the way for genuine decentralization of power to the grass-root level by vesting substantive powers with PRI’s through a participatory local self-rule model of development. Under the Act, the Panchayati Raj Institutions have been vested with powers for:
Ownership of Minor Forest Produce

Development plans approval

Selection of beneficiaries under various programs

Consultation on land acquisition

Planning and Management of minor water bodies

Control mineral leases

Regulate/Prohibit sale of intoxicants

Prevent alienation of land and restore unlawfully alienated land of STs

Manage village markets

Control money lending to STs

Control institutions and functionaries in all social sector

The scope of the present study is limited to study of the powers of ownership of minor forest produce and planning and management of minor water bodies. Consequently what follows is a discussion of the scope of powers vested and the shortcomings in the law and/or its interpretation and operation in the field.

3.2.1 Ownership of Minor Forest Produce

The grant of ownership of minor forest produce to the Gram Sabha and to Panchayat at Appropriate Level has possibly been one of the most controversial powers vested with the Panchayati Raj Institutions under the PESA. The controversy over minor forest produce is over issues of lack of clear-cut definition of village and minor forest produce, confusion over the interpretation of the concept of ownership of minor forest produce, absence of demarcation of the forests over which the Gram Sabha can exert ownership rights, procedure to be followed for sale of minor forest produce, place where harvesting of minor forest produce can be done, the exact nature of relationship between Gram Sabha and Forest Department etc. However, at the root of the controversy is the unwillingness of the center and the states to transfer the resource to the people as the enforcement of this provision of PESA has been perceived as “weakening the stranglehold of the forest bureaucracy”. This is exemplified by the report of the an expert Committee set up by the Ministry of Environment and Forests (hereinafter MoEF) in January 1998 to study the provision of ownership of minor forest produce. The committee defined minor forest produce
as being “the forest produce other than timber\textsuperscript{31} that is harvestable on a non-destructive basis”. Interestingly, this definition, excludes bamboo and cane, two minor forest produce most crucial for livelihoods of tribals\textsuperscript{32}. The Committee, strongly iterated that the forestland and the trees on forestland are the property of the government and that the transfer of ownership rights to someone else is incongruous with the fact that forest belong to the government. The committee, displaying a decided lack of faith in the capacity of Gram Sabha to use forests sustainably, thus concluded that “conferring of ownership rights which may allow Gram Sabha’s to undertake destructive harvesting, is neither desirable nor practical. Gram Sabha’s not only in Scheduled Areas but all over the country be given usufructory rights over MFP available from Government Forests except protected areas”. It has been observed that contrary to the spirit of PESA, the ownership as provided for in PESA has been reinterpreted to mean the right to net revenues from MFP, after retaining administrative expenses of the forest department. These observations of the MoEF are very debatable and need to be seen in the context of environmental security of the tribals who have been living in and managing the forests for generations in sync with the local environment. Further, there is also the question of the traditional ownership of the common pool resources such as the forests by the local people – a system that was eroded by the British and that is being further destroyed by the government policies of limiting the role of the local people from the forests.

3.2.2 Planning and Management of Minor Water Bodies

The PESA entrusts the power of ‘planning and management of minor water bodies’ with the Panchayats at Appropriate Level. Significantly, the PESA does not vest ownership of the water bodies with the Panchayats, but only the power to plan and management. However, the Act does not define what would constitute “minor water bodies” or what is meant by “planning and management”. Like in the case of ownership of minor forest produce, the absence of clarity on the definitions of these key terms is one of the biggest shortcomings in effective implementation of this power vested by the Law.

3.3 Panchayati Raj in Rajasthan

Consequent upon the enactment of Constitution (73rd amendment) Act 1992, state of Rajasthan enacted a number of new Panchayat legislations in consonance with the provisions of the 73\textsuperscript{rd} Amendment Act, namely:
Before going into the structure and specific provisions of the Panchayati Raj structure in Rajasthan, it is pertinent to mention here that the provisions of Rajasthan Panchayat Act of 1994 are applicable to the tribal areas in Rajasthan subject to the provisions of the Rajasthan adaptation of PESA.

3.3.1 The Rajasthan Panchayati Raj Act, 1994

In the wake of Constitution (73rd Amendment) Act, the state of Rajasthan, following the letter of Part IX of the Constitution, enacted a new Act for regulating the Panchayati Raj Institutions in the State. The Act, which came into force in April 1994 provides for setting up of a three tier Panchayat structure with Gram Panchayat at the Village Level, the Panchayat Samiti at the block level and the Zilla Parishad at the District. However, in the year 2000, the Act was significantly amended to add, amongst other things a fourth tier to the PRI’s called the Ward Sabha. Discussed below is the form, structure and functions of each of these tiers along with the special provisions, if any, relating to women in these institutions.

3.3.1.1 The Lowest Tier – Ward Sabha

The concept of Ward Sabha, unique to the state of Rajasthan, was introduced vide an Amendment to the Rajasthan Panchayati Raj Act in the year 2000. The amendment provides for dividing Panchayat Circles of the state into single member wards having a Ward Sabha comprising of all adult persons of the Ward. All Ward Sabha’s normally are to meet at least twice a year while in exceptional circumstances an emergency meeting can be called on requisition by more than 1/10th of the total members or higher levels of PRI’s. The quorum for the meetings of the Ward Sabha is 1/10th of the total number of members out of which the presence of women, SC,ST and BC in proportion of their population in the Ward is mandatory. The functions of the Ward Sabha include:

(a) Rendering assistance to the Panchayat in collection and compilation of details required for formulation of development plans.
(b) Generating fixing of priority of development schemes and programmes.

c) Identification of beneficiaries.

d) Rendering assistance in effective implementation of development schemes.

e) Suggesting location of public utilities, amenities and services such as community water taps, public wells, irrigation facilities etc.

(f) Getting information on the detailed estimates of works proposed to be taken in the area of the Ward Sabha; exercising social audit in all works implemented in the area of the ward Sabha and awarding utilisation and completion certificate for such works.

g) Exercising check on institutions and functionaries in all social sectors.

It is pertinent to mention here that the provision for Ward Sabha described above are not restricted to the Scheduled Areas of Rajasthan. Further, though they do not bestow any special powers or provide for any special provisions for empowerment of women other than providing for mandatory presence of women to constitute a quorum for the meetings the provisions do provide the space for active intervention by women individually and through mahila mandals. It is these spaces that need to be utilised to the hilt to empower women.

3.3.1.2 The Second Tier – Gram Sabha

The entire state of Rajasthan, barring the urban areas and the cantonment, is divided into Panchayat circles comprising of a village or group of villages.34 For each such Panchayat circle, the Rajasthan Panchayati Raj Act mandates the formation of a Gram Sabha35 comprising of all persons registered in the electoral rolls in the area as members36. Like in the case of Ward Sabha, a Gram Sabha also has to hold at least two meetings every year, one in the first and the other in the last quarter of the financial year. However, there is a provision for holding an urgent meeting of the gram sabha (within 15 days) upon written requisition of one tenth of the members of the Gram Sabha.37 Significantly, the quorum for a meeting of the Gram Sabha is one-tenth of the total number of out of which the presence of women in proportion to their population is mandatory. The significant functions of the Gram Sabha include.
(1) Approval of plans, programmes and projects for social and economic development in order of priority from the plans, programmes and projects approved by the Ward Sabha

(2) Identification of beneficiaries under poverty alleviation and other programmes out of the persons identified by Ward Sabha

(3) Planning and management of minor water bodies

(4) Management of Minor Forest Produce

(5) Control over institutions and functionaries in all social sectors

(6) Control over local plans and resources for such plans including tribal sub plans

It is pertinent to mention and note here that the above stated functions of the Gram Sabha are applicable to all gram sabhas in the state. The provisions of control over minor water bodies and minor forest produce, amongst other functions, spelled out in PESA for the Gram Sabha’s of the Scheduled Areas have been extended under the Panchayati Raj Act to apply to all Gram Sabha’s in the state.

The report of the Task Force of the Planning Commission for the Tenth Five Year Plan has recently observed that attendance in Gram Sabha meetings has been rare. The reasons for low attendance of these meetings are manifold. Gram panchayats jurisdiction extends to 5 -10 villages in many States and distances make it difficult for many, especially for women, to attend the meeting. Annual meetings are too unwieldy and held only for Performa approval of accounts. Further, the time when Gram Sabha meeting is held is also a very important factor in determining the turnover of the people. People are reluctant to attend these meetings if they have to lose a day’s wages. Other reasons usually cited are – personalized nature of village politics, lack of proper venue and reluctance of elected representatives to convene meetings.

The Task force has stated that the reason for limited success of Gram Sabha meetings is the failure of most States / UTs to prescribe a procedure for implementation of the Gram Sabha decisions. Many Evaluation Studies have pointed out that villagers view gram panchayats only as a means for selection of beneficiaries for various development programmes. Beyond this the PRIs have nothing tangible to offer to the non-beneficiaries. Instances have also come to light where in the absence of a quorum, the meeting is adjourned on the same day meeting is reconvened as there is no requirement of a quorum for a reconvened
meeting. In effect, the decisions are taken by panchayats without participation of the people.

The report of the task force further points out that in several instances the elected women chairpersons, particularly at the village panchayat, had to depend exclusively on their family members in performing their official duties. Many of these women members and sarpanches did not know the nuances of panchayat administration and had to depend on their men for transacting official business. In fact, a number of instances have been reported where the husbands or brothers of the women sarpanches had, on behalf of and with their tacit approval, presided over the panchayat meetings and took part in the deliberations. In regard to the elected sarpanches and members of the Scheduled Castes and Scheduled Tribes in the village panchayats, they had to depend on the explicit or implicit support of their ‘masters’ who are the traditional power-holders. Even the officials working at the village level are also not favorably reconciled to working under the control of women sarpanches. The interesting insights provided in the report have been further verified during the field visits and suggestions to overcome these will be sought to be taken from the people in the village, especially the women.

3.3.1.3 The Higher Tiers – Panchayat/Panchayat Samiti/ Zila Parishad

(A) Panchayat

The act provides for the constitution of a panchayat for every panchayat circle headed by a sarpanch. In addition the panchayat also has as its members directly elected panches from all the wards in the panchayat circle. A panchayat is to meet at least once in a fortnight. Every panchayat is to constitute ‘standing committees’ for several subjects listed in the act. Two such committees immediately relevant for the present study are for development and production programmes including those relating to agriculture, animal husbandry, minor irrigation, cooperation, cottage industries and other allied subjects and for social services and social justice including rural water supply, health and sanitation, gramdan, communication, welfare of weaker sections and allied subjects. The committees are to consist of five members elected from amongst the elected members of the panchayat. Curiously, there are no provisions in the act to provide for mandatory representation of women in any of the standing committees. Panchayat have also been
empowered, under the law, to frame byelaws to regulate the manner in which tanks, ponds, cesspool, pasturelands etc are to be maintained and used. The other functions bestowed on the panchayat include planting and preservation of trees on the sides of village and district roads and other public lands under its control, fuel plantation and fodder development, promotion of farm forestry, development of social forestry and farmer nurseries, control and maintenance of tanks upto 50 acres, construction, repairs and maintenance of drinking wells, tanks and ponds, prevention and control of water pollution, maintenance of hand pumps and tank schemes, cleaning of public roads, drains, tanks, wells and other public places.

(B) Panchayat Samiti

The Act provides for division of local areas within a district by the state government into blocks and provides for establishment of a Panchayat Samiti for all such blocks. The members of the Panchayat Samiti include directly elected members from all territorial constituencies of the Samiti, members of the Legislative Assembly and Chairpersons of all Panchayat. Meetings of the Panchayat Samiti are to be held at least once a month.

(C) Zila Parishad

The act provides for setting up of zila parishads for every district in the state comprising of directly elected members, members of Lok Sabha and Legislative Assembly representing constituencies of zila parishad area and members of Rajya Sabha registered as electors from that area. The zila parishad is to hold meetings at least once in three months.

In all the above-described three bodies, seats are reserved for women, SC, ST and for members of BC. Further, even amongst the seats reserved for the SC, ST and BC, at least one-third seats are reserved for women belonging to these classes. The total number of seats reserved for women at all three levels (including those for SC, ST, BC women) is ‘not less than’ one-third of the total number of seats to be filled by direct election. Further, the act also provides for allotting of seats by rotation to different wards/constituencies. The implication of the last provision of allotting of seats by rotation could be that women from all wards may not get representation in higher tiers of Panchayati Raj. In addition to representation of women in the institutions in general, reservation is also made for women for the offices of the sarpanch, pradhan and
pramukh. Similar to the reservation of seats, not less than one-third of total number of offices of panchayat raj heads are reserved for women and are to be allotted by rotation. However, the act does not provide for reservation of women within the seats reserved for the SC, ST and BC. The act also disqualifies any man to fill up a seat reserved for women and also bars seats reserved for SC, ST or BC woman to be taken up by someone not fulfilling this criteria. The quorum for meetings of all three tiers of PRI’s is one third of the total number of members. Curiously, the provision for quorum does not require the presence of a minimum number of women to complete the quorum.

Having discussed the structure of the panchayati raj in Rajasthan, let us now look into special provisions made for Scheduled Areas of Rajasthan.

3.3.2 Rajasthan Panchayat Extension to Schedule Areas Act, 1999

The State of Rajasthan extended the provisions of PESA to the Scheduled Areas in Rajasthan in 1999 vide the Rajasthan Panchayat Extension to Scheduled Areas Act, 1999. The act, in a manner very similar to the Central PESA vests extensive powers relating to natural resource management to the Panchayat at different levels in the state. Some of the significant features of this act in relation to the present study relate to planning and management of minor water bodies, ownership of minor forest produce, power to exercise control over institutions and functionaries in all social sectors and power to control local plans and reservation of seats.

3.3.2.1 Minor Water Bodies

With respect to minor water bodies, the act provides that ‘planning and management of minor water bodies, as may be specified by the State Government in the Scheduled Areas shall be entrusted to Panchayati Raj Institutions at such level as may be provided’. Unlike the provisions of the Central PESA, which provides for the entrustment of all minor water bodies in Scheduled Areas with panchayat at appropriate level, the state government of Rajasthan has not automatically given panchayat power to plan and manage the minor water bodies. Instead, the state government has retained the discretion to specify the bodies over which the Panchayat is to exercise control. Additionally, the Rajasthan PESA does not even specify the specific functions of the
various tiers in planning and management of minor water bodies with the result that there has only been a transfer of power in name without actual devolution of function and responsibility. Further, no other supporting rules giving the blueprint of transfer of power, functions, funds and functionaries has been made till date. Besides, the state has also retained the power of prescribing how the planning and management is to be conducted with the effect that in practical terms, a mockery has been made of transferring power to the tribals.

3.3.2.2 Minor Forest Produce

Planning commission report clearly shows that only functions have been devolved on paper without the necessary corresponding functionaries to carry them out or the funds to implement the functions. With regard to minor forest produce, the Rajasthan Panchayat Act provides that the Panchayati Raj Institution at appropriate level or Gram Sabha, as may be prescribed, in a Scheduled Area shall have the ownership of minor forest produce subject to such rules as may be prescribed by the state government as to control and management of minor forest produce. There are several anomalies in this provision. Foremost, this provision fails to emulate the spirit of the Central PESA by not empowering both the Gram Sabha and the Panchayat at the Appropriate Level. Further the provision separates the ownership of the minor forest produce from its management and control and vests ownership with Panchayat while giving the state government the power to control and manage the produce. The ownership of any resource has to necessarily imply control over that resource; unless an owner has the decision making power of managing and exercising control over the resource, the ownership would only be in name. The implications of these provisions, especially the way the provision has been interpreted and is being implemented by the Forest Department is one of the critical factors and this will be further studied at the time of field visits.

3.3.2.3 Role of Women – Reservation of Seats and Beyond

The Rajasthan PESA does not specifically provide for the representation of women in PRIs in Scheduled Areas. Instead, it follows the scheme of the central PESA and provides that the ‘reservation of seats in the Scheduled Areas at every Panchayati Raj Institution shall be in proportion to the population of the community in that PRI for whom reservation is sought to be given under section 15 and 16 of Rajasthan Panchayati Raj Act’. It is pertinent to mention here that Sections 15
and 16 referred to as above do provide for reservation of women (discussed in the previous section). The actual involvement of women in ward sabha and gram sabha meetings, the importance given to women’s ideas, the power and role of women sarpanches and its implications in law need to be studied in greater detail.

3.3.3 Rajasthan Panchayati Raj Election Rules, 1996

In pursuance of the rule making power conferred under the Rajasthan Panchayati Raj Act, 1994, the state government enacted rules to operationalise the law in 1996. Some of the significant provisions of the Rules relevant in the present context are discussed in this section.

With respect to the Vigilance Committees, the rules provide that the members of these committees shall be community leaders not participating in elections and members of Panchayat Samiti or zila parishad residing in panchayat area by approval of Gram Sabha. Surprisingly, no reservation is made for women in these vigilance committees. The rules also provide for levy of charge for use of public tap, pump and tank scheme or hand pump by the Panchayat. Again, there is not provision for say of women in the tax to be levied by the Panchayat for the water from the minor water bodies. Further, the rules also cast a duty upon the Panchayats to raise their income from water tanks and reservoirs that have been handed over to them. In this regard, the panchayat are empowered to lease out tanks waters by private contract or public auction. In case irrigation is done through water reservoirs in panchayat area, the panchayat can recover irrigation charges as well. However, the provision does not provide for consultation with women in any of these activities. Even the provision for preparation of annual action plan for panchayati raj Institution provides for safeguarding interests of ‘weaker section in the village’ and lays down that ‘priority shall be given to works benefiting SC, ST, Women an other weaker sections of the village society’. However it does not provide for involvement of these strata’s while making the actual decisions.

3.3.4 Rajasthan Panchayati Raj (Election) Rules, 1994

The Election Rules provide for one third of the total seats in Panchayati Raj Institutions (including those for women of SC, ST and BC) to be reserved for women. Further out of the seats reserved for SC, ST or BC one-third seats are to be reserved for women belonging to such classes. The number of seats reserved for women belonging to the SC,
ST and BC are to be derived by dividing the total seats to be reserved by three. In case only one seat each is reserved for SC, SST or BC in any Panchayati Raj Institution, one seat out of the three as determined by draw of lots shall be reserved for women. The remaining seats reserved for women are to be determined by dividing the total number of seats by three and the number so determined shall be reduced by the aggregate of the number of the seats derived for women belonging to SC’s, ST’s and BC’s. For the seats of Sarpanch and Pradhan, the rules provide for reservation of seats for women for these posts by an officer authorised by the Government by draw of lots.

Notes:

23 Article 243D reads “(1) Seats shall be reserved for – (a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats of 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 the 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.”

24 Manoj Rai et al; The State of Panchayats: A Participatory Perspective; pp 105.


26 The Scheduled areas or tribal areas are those which are so mentioned in Article 244(1) of the Constitution.

27 Several definitions of minor forest produce have been put forth by different authors. Some have argued that in general usage, minor forest produce is said to mean everything that is obtained from the forest except wood. Krishnamurthy has defined minor forest produce given as “all forest products other than timber and fuel wood, includes, medicinal plants, essential oils, spices, edible wild plants, gums, raisins,
oleoresins, fatty oils, tanning materials, natural organic colouring material, katha and cutch, oxalic acid, fibres and flosses, beverages and narcotics, fodder and forage plants, saponins, fish poisons, insecticides and raticides, green manure, beads, rubber plants, plants useful for paper, basket, wicker, thatching and broom materials. Saxena, on the other hand, has defined minor forest produce as “that part of a tree that can be sustainably harvested without damage to the survival of the tree”. Interestingly, some states such as Madhya Pradesh have given minor forest produce an exclusive definition and have provided that “the harvesting of produce which leads to destruction of trees, plants and vegetation will not be construed as minor forest produce”.

28 It has been argued that the ownership does not provide gram sabha the right to take any decisions related to stewardship, management or harvesting of minor forest produce (see Saxena, N.C.; Issues in Panchayat; Planning Commission).

29 The state governments have argued that the power of gram sabha can extend only to forests located within the revenue boundaries of a village (see Saxena, N.C.; Issues in Panchayat; Planning Commission).

30 Saxena, N.C.; Issues in Panchayat; Planning Commission.

31 Timber includes fallen trees and all wood whether cut up or fashioned or hollowed out for any purpose or not. Significantly, cane and bamboo have been included in the definition of timber.

32 Cane and bamboo have been excluded by defining timber to include cane and bamboo.

33 The Scheduled Areas specified in Rajasthan comprise Banswara and Dungarpur districts and some parts of Udaipur, Chittorgarh and Sirohi districts.

34 Section 9(1) of the Rajasthan Panchayati Raj Act, 1994.

35 What is a gram sabha is common parlance.

36 The membership of the gram sabha unlike that of the ward sabha does not extend to all adult residents of the circle; on the other hand it is limited to those residents whose names find place in the electoral rolls.

37 A special meeting can be called by the panchayat samiti, zila parishad or the state government.
Chapter IV
Forest Laws in Rajasthan –
The Envisaged Role of Women

4.1 Forest Laws in Rajasthan: An Overview

The main forest law in the state of Rajasthan is the Forest Act of 1953 within which, a number of rules and notifications have been passed by the State Government to manage and regulate the activities in the forests. Further, the state has also adopted a Joint Forest Resolution in accordance with the Central Government Circular of 1991. Described below are the key provisions of the main forest laws and the Joint Forest Management Resolution of the State. However, at the outset, it is pertinent to mention that none of these laws have been amended to reflect the provisions of either the role of panchayats in forestry management or the special powers given to the gram sabha in tribal areas. However, the Joint Forest Management resolution of the state has been periodically amended and does take into account the new wide powers vested with panchayats and does provide for participation of women in management of forests.

4.2 The Rajasthan Forest Act, 1953

The Forest Act of Rajasthan of 1953 is the central law in the state regulating forests, the transit of forest produce, and the duty leviable on timber and other forest produce. The Act is universal in application throughout the state of Rajasthan in that it applies to the whole state and does not make any special provisions for the Scheduled Areas. The Act does not give any definition of minor forest produce. However, it does define ‘forest produce’ as: “forest produce includes – (a) the following whether found in or brought from a forest or not that is to say: timber, charcoal, caoutchoue, catechu, wood oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds and myra, myrabolams and (b) the following when found in or brought from a forest that is to say: (i) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees; (ii) plants not being trees (including grass, creepers, reeds and moss) and all parts of produce of such plants; (iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax and all other parts of produce of animals and
(iv) peat, surface soil, rock and mineral oils and all products of mines or quarries”. Further, the act defines timber to include “trees when they have fallen or have been felled and all wood whether cut up or fashioned or hollowed out for any purpose or not” and trees to “include palms, bamboos, stumps, brushwood and canes”. Clearly, in light of the provisions of PESA, this Act needs to not only distinguish between the provisions of Scheduled Areas and Non-Scheduled Areas but would also need to categorically designate what would constitute to be a minor forest produce. As of now, the tribal women in Rajasthan have their own definition of the forest produce that they would designate as “minor”. The definition, it was found during field visits, is more or less uniform across villages. It needs to be ensured that a participatory survey is conducted to identify the MFP and suitable amendments are made in the definition clause of the Forest Act to reflect this definition.

The Rajasthan Forest Act is modeled in a structure similar to that of the Indian Forest Act of 1927, in that it classifies forests into four categories of Reserved Forests, Protected Forests, Village Forests and Forests, and lands not being the property of the state government. The Act provides for a very comprehensive regulatory regime for almost all forests, wasteland, and other lands in the state. The Act empowers the state to not only impose duty on timber and other forest produce in respect of which state has a right but also make rules to regulate transit of forest produce and timber. During field visits, it was apparent that these legal classifications do not have much meaning for the local women. For the local people the only classification that is material is whether the forest is open to them or not and if it is open then what are the forest products that they have access to. The total control over the access to forests is regulated by the forest guard who decides what can be extracted from the forest and what cannot be.

Significantly, the Act does not make any reference to the regulation or ownership of minor forest produce. The Act, it would seem, has by vesting control of forest produce with the government, automatically vested the ownership of minor forest produce with the government as well. This lack of clarity in the Act is dangerous as it can be interpreted by the forest officials to ignore the rights vested under PESA. Infact, the situation could be very much like the above mentioned interpretation of MoEF claiming that it is only over net revenue from MFP that local people have rights.

Another significant feature of the Act is that it does not make any special provision for women and does not in any way recognize the
special dependence or relation of women with forests. This is a serious oversight that needs to be rectified urgently.

4.3 The Rules Made Under Rajasthan Forest Act, 1953

4.3.1 The Reserved Forest Rules, 1957

These rules lay down the guidelines for the clearance of forests and shifting cultivation, the cutting of grass, pasturing of cattle in such forests and the rules for carrying of forest produce by authorized persons. Like the Rajasthan Forest Act, these rules make no reference to the control of minor forest produce, the ownership and control of which seems to be implicitly vested in the state.

4.3.1.1 The Rajasthan Forest (Settlement) Rules, 1958

These rules, as is apparent from their title, prescribe the rules for the settlement of forests into the four categories of forests mentioned in the Rajasthan Forest Act of 1958. They lay down the detailed procedure for demarcation and survey of lands, the investigation of claims and the determination of rights and concessions. Interestingly, the Chapter V of the rules provide a ‘right’ to collect minor forest produce which is to be removed “on head loads only to the extent permitted for their personal bona-fide requirements and for petty sale”. The minor forest produce identified for collection have been specified in the rules as “gums and resin, wax and honey, hides and horns, wood oil medical herbs, flowers and leaves, fruits and seeds, bark, fiber, clay, sand, gravel limestone, pebbles and concrete etc”. It is pertinent to note that most of these identified minor forest produce have been included in the definition of ‘forest produce’ under section 2(4) of the Rajasthan Forest Act of 1958. Further, with respect to fuel wood, which also happens to be a minor forest produce, the rules provide the ‘form of taking of fuel wood’. It specifies that though definition of the quantity of permissible fuel wood is not easy, it may be possible to specify the number of bundles or head loads to be taken per mensem. Also as of now, the quantity of the forest produce and the items that can be withdrawn are based upon the discretion of the forest officers. More clarity is needed on these fronts. Further, since different localities have different flora and natural resources and since as the local usage varies from area to area, local rules should reflect such diversity.

For people living in villages situated near the edges of the forests, the rules provide that since such people have considerable are of land
available outside the forest limits, they can meet part of their requirements from areas not included in the forests. In such cases, the rules provide that on an average, 8 head loads per month per household should suffice and on a scale half a seer per head per day of fuel may be admitted. However, with regard to villages deep in the forests, double the quantity is allowed as fuel in such areas is easily available in abundance and also because people living in forests have access to no lands other than the forests from where they can get fuel wood. However, in reality the local people are ignorant of these concessions and in absence of legal knowledge are dependent upon the dictates of the forest department. The rules further clarify that no green wood is to be cut but only dry wood may be allowed to be taken away free for bona fide domestic consumption. The rules also make special provisions for tribals. They provide that in “rare cases such as where certain hill tribes e.g. Bhils, Minas etc. who have no other means of livelihood except the sale of firewood in head loads in neighboring localities; it would be necessary to fix a limit to the number of head loads that may be removed per mensem, which may be fixed at 15-20 head weighing 20 seers each per individual for all the year round except the rainy season”. These rules are extremely significant as they are the only official legislation that gives an idea about what the state deems to be minor forest produce. The provisions of these rules can be potentially used to reaching a consensus with the state as to the produce, which tribals can authoritatively claim, ownership. These rules are definitely more advanced in terms of detailing powers as compared to the forest rules in most other states. What is missing however is awareness of the rules amongst the local people and even amongst the officials of the forest department. It would be most fruitful if legal literacy camps were organized for both – the forest officials and for the local people. Such sessions were conducted for tribal women as part of the project. However, such sessions need to be carried out at a much larger scale across the state as a first step towards empowerment of local people.

4.3.1.2 The Protected Forest Rules, 1957

These rules lay down the guidelines for cutting, sawing, conversion, and removal of trees and timber and the collection, manufacture and removal of forest produce from protected forests. The rules also specify the regulation for clearing and breaking of land for cultivation or other purposes in protected forests and for cutting of grass and pasturing of cattle. Though these rules do not specifically mention minor forest produce, they do have reference for procedure to use certain forest
produce (such as katha and lime) that can be classified as minor forest produce. The rules also lay down the regulation for grant of permit and licenses to the inhabitants of towns and villages in the vicinity of Protected Forests to take trees, timber or other forest produce for their own use and the production and return of such licenses by such persons. Further, the rules also regulate the cutting of grass and pasturing of cattle in the protected forests. Again, the provisions of these rules are important to identify the rights already granted to local people in the protected forests (such as those pertaining to katha and lime etc.) and also to explore in the future the amendments necessary to give control to tribal women over the minor forest products.

4.3.1.3 The Rajasthan Forest (Produce Transit) Rules, 1957

The rules lay down the procedure for movement of forest produce within any area of Rajasthan. Significantly, the Rules specifically provide that the State Government may exempt from the operation of the rules “the movement of any forest produce by any specified mode of transport into or from or within any area notified by the state government.” The space provided in this provision of movement of forest produce is worth exploring to enable tribal women to legally extract the minor forest produce from the forests in their vicinity.

4.3.1.4 The Rajasthan Reserved Forests (Exercise of Rights) Rules, 1960 and the Rajasthan Reserved Forest (Exercise of Concessions) Rules, 1960

These rules lay down the conditions for the exercise of rights and concessions to pasture and to forest produce under Section 12 and 14 of the Forest Act. It is pertinent to note that both the rules permit extraction of head loads of “dead dry fallen fuel wood” for “bona fide domestic needs.” Again the provisions of these rules are interesting as they potentially provide the space to allow tribal women to carry out fuel wood for bona fide domestic needs out of the forests.

4.3.1.5 The Rajasthan Protected Forest (Exercise of Rights) Rules, 1960 and the Rajasthan Protected Forest (Exercise of Concessions) Rules, 1960

Very similar to the Rajasthan Reserved Forests (Exercise of Rights) Rules, 1960, and the Exercise of Concessions Rules, the Rajasthan Protected Forest (Exercise of Concessions) Rules, 1960 and the Exercise of Rights Rules also lay down the conditions for the exercise of
concessions and rights for pasture and forest produce under section 29 of the Rajasthan Forest Act. These rules also allow the removal of head loads of “dead dry fallen fuel wood” for “bona fide domestic needs” and can similarly be used to the advantage of tribal women.

4.3.1.6 The Rajasthan Jungle Theka Babat Niyam, 1958

These rules provide for the auction of the contract of forest produce. These rules are particularly significant as the forest department gives contracts for minor forest produce amongst timber and other forest produce. In order for the panchayats to assume control over minor forest produce in the state, not only the contracts given till date but also this statute would need amendment. Further, the amendment would need to not only make provision to include panchayat members but amongst panchayat members, special provisions for inclusion of women in decisions to manage such produce.

Notes:

38 Section 2 (4) of the Rajasthan Forest Act, 1953.
39 Section 2(8) of the Rajasthan Forest Act, 1953.
40 Section 2 (9) of the Rajasthan Forest Act, 1953.
41 Reserved Forests are the most restricted category of forests where barring the rights admitted and settled by the Forest Settlement Officer, no other rights accrue (Section 3 to 26 A of the Rajasthan Forest Act, 1953).
42 Protected Forests are those which are so declared out of the forests, which belong to the government, which are not included in Reserved Forests or over which the government has proprietary rights. The government has the right to reserve trees in protected forests. All activities, unless specifically prohibited are permitted in Protected Forests.
43 Village Forests are those reserved forests that are assigned by the government to village communities. The state government reserves the right to make rules for regulating the management of village forests, prescribing the conditions under which the community may be provided with timber or other forest produce or pasture, and their duties for the protection and improvement of such forests.
44 The Act empowers the state with regulatory power in any forest and wasteland for protection of forests for special purposes. The state government also has the power to assume management of forests in certain specified circumstances, acquire such land or take up forest for protection at request of owners.
Chapter V
Women in Joint Forest Management

5.1 Evolution of Joint Forest Management in India

The evolution of the concept of Joint Forest Management (JFM) in India can be traced back to the farm forestry initiatives of the 1970’s and 1980’s. These initiatives led to the growth of the realization that while conservation of forests is of utmost importance, securing the livelihoods of millions of rural people who subsist on forests for their life and livelihood is also equally important. This need to involve local people manifested in a plan whereby the forest departments worked hand in hand with the local communities to revive and manage forests though a circular of the Ministry of Environment of Forests in 1990. The JFM resolution has since been amended a number of times and has been taken up by all states including Rajasthan. Discussed below are the key provisions of the working of JFM in Rajasthan.

5.2 Joint Forest Management in Rajasthan

The scheme adopting JFM was officially taken up on the broad principles as laid down in the circular of Ministry of Environment and Forest by the state of Rajasthan vide a resolution in 1991. However, like the circular of the Ministry of Environment and Forests, this resolution has been amended vide orders dated 15 March 1991, 20 March 1997, 10 May 1999, 20 November 1999 and 20 June 2000. Discussed hereinafter is the latest amendment to the scheme of 2000.

The 2000 JFM Resolution of Rajasthan seeks to conserve, develop, and manage degraded and denuded forestlands in the state by means of “cooperation and participation of the local villagers and voluntary agencies through gram panchayats.” Accordingly, the scheme provides for the constitution of Village Forest Protection and Management Committee (VFPMC) in every revenue village to enlist people’s cooperation for protection and management of Social Forestry plantations on panchayat and Government wastelands. Membership to the committee is open to all adult persons residing within the revenue boundaries of the concerned village. To this end, the Range Forest
Officer/ Forest Extension Officer with the help of the Panchayat concerned or the NGOs/VAs active in the area, are responsible for making a list of the willing persons. Significantly, this list of willing persons has to necessarily comprise of 33 per cent women.

Further, in addition to the VFPMC, the Resolution provides for the constitution in each village, a Women’s Advisory Sub-committee (WAS) comprising of not less than 7 women from the village. The main function of the subcommittee is to contact the womenfolk of the village and present their problems relating to forest based activities in the meetings of the Executive of the VFPMC. To ensure that the concerns of women are heard, the Forester/Assistant Forester/Forest Guard is to ensure that the WAS meets regularly to discuss women’s problems and suggest solutions. She/He is further required to present the decisions/recommendations of the sub-committee for consideration of the VFPMCs which in turn has to give due consideration to the proposals of the sub committee.

For managing the affairs of the VFPMC there is to be an Executive Committee compromising of not more than 11 members. Notably, the Executive is to be elected from amongst the VFPMC members by the gram sabha. The Executive is to have at least one member each from the Scheduled Castes and Scheduled Tribes where the percentage of population of each of these groups is 10 per cent or more. Where the percentage of SC and ST populations combined is 15 per cent or less, at least one member from the SC and ST is to be elected to the Executive. Further, the Executive must have at least three women members. The members of the Executive are to elect, from among themselves, a chairman, a Vice-Chairman and a Treasurer, and at least one of these has to be a woman. In addition to the elected members of the Executive, the Sarpanch/Ward-panch belonging to the village is to be opted as a non-voting ex-officio member of the Executive. Also, the chairperson of the Women’s Advisory Subgroup is to be a voting member of the Executive.

The VFPMC is to hold at least two general body meeting in a year though the Chairman and if so requested by at least one third of its members, the Secretary may also call a special meeting of the general body. The quorum for the VFPMC meetings is 40 per cent with not less than 33 per cent of the women members being present. Further, the quorum for meetings of the Executive is six members out of the
eleven, and at least one of them is to be a woman member. Also, the resolution explicitly states that special attention is to be paid to the suggestions made by women members in meeting of the Executive.

The functions of the VFPMC include protection of forests from cutting, grazing, fire, unauthorized use or encroachment, collaborative micro-planning, production, management, resource sharing, dispute resolutions and marketing of the final harvests. The resolution explicitly provides that protection of forest and pasturelands will be done after taking into account the views of people in general and the technical opinion of the departmental personnel, so that the bona fide needs of the people, such as fodder, fuel and other non-timber forest produce, are met while conserving the resources for posterity. Significantly, the VFPMC is empowered to evolve/prescribe/lay down rules for harvesting and sharing of forest produce, such as grass, leaves, fruits, lops, tops etc. harvested from lands managed by it, including deciding amount of fee/levy to be charged, if any. The only caveat to this power is that such rules have to be in agreement with the management plan adopted by it so that the harvesting of product is sustainable.

The Executive of the VFPMC in consultation with and with the assistance of, the forest department’s personnel and the NGO of the area is to make a management plan. The plan is to take into account all the important aspects of sustainable management of forest resources, such as sound silvicultural practices, effective soil and moisture conservation, and conservation, and conservation of biodiversity and is to be prepared with participation of, and in consultation with, the different sections of the society, especially the women and the weaker sections.

The VFPMC is required to protect and manage forest/plantation area for at least five years to earn rights to forest produce. Nonetheless, it is pertinent to note that VFPMC is entitled to free non-timber forest produce harvested from the areas managed/protected by it before the final harvest. Such free product include grass, leaves, pala pods, fruits, flowers, seeds, dried/deadwood/branches, munja, buhari, khas are other produce to be removed in accordance with the provisions of the approved management plan. However, Tendu leaves and gum are not deemed to form part of such free produce. The VFPMC can also frame rules for harvesting and sharing of these products and such rules may also provide for fees/levies, which would form a source of income to the VFPMC.
A broad analysis of the Rajasthan JFM Resolution clearly demonstrates that the latest resolution makes an active effort to integrate the formal panchayati raj system into joint forest management. Further, exemplary provisions to involve and engage women in decision making at all levels have been made.

At the field level, though the JFM Scheme is in operation, the participation of women is meager. It appeared that there is a conflict amongst the forest department and the local women as to which trees should be planted. For instance in one of the study panchayats, the women were keen to plant mango trees under the JFM schemes as the tree not only provides food but also shade from the scorching summer sun. However, the forest department over ruled the opinion of the women. This is however, not to say that the JFM scheme is a failure. There were patches where forests were being protected but again the stronger control seemed to be of the forest department. To bring out the true spirit of the JFM resolution, more awareness generation programs should be carried out which not only educate the local people with their powers and duties but also ensure that the forest department does not, under any guise, usurp these powers.
Chapter VI

Minor Water Bodies and the Role of Women

The PESA empowers the gram sabhas in tribal areas to ‘plan and manage’ minor water bodies. The state of Rajasthan does not have any specific law, which talks about minor water bodies as such. Moreover, none of the state statutes categorically define a minor water body. However, certain laws do refer to management of water bodies such as local ponds etc that in common parlance can be taken to be as ‘minor’. While the need for the state government to clarify what would be a minor water body remains to be an issue of prime urgency, for the present study takes as minor water bodies all local water sources in a village such as ponds, wells, hand pumps etc. Described below are the central statues in the state that pertain to planning and management of water bodies in the state generally.

6.1 The Rajasthan Irrigation and Drainage Act, 1954 and the Rajasthan irrigation and Drainage Rules, 1955

Perhaps the most significant dealing with water bodies in Rajasthan is the Rajasthan Irrigation and Drainage Act of 1954, which seeks to regulate the irrigation and drainage in the state. The Act defines irrigation works as “a work or system of works, natural or artificial, not being a minor irrigation work as defined in section 2 of the Rajasthan Minor Irrigation Act, 1953 and includes: (a) any canal, channel, pipe or reservoir constructed, maintained or controlled by the state government for the supply or storage of water; (b) any work, embankment, structure or supply and escape channel connected with such canal, channel, pipe or reservoir; (c) any water course; (d) any part of a river, stream, lake or natural collection of water or natural drainage channel to which the state government applies the provisions of part II of this Act”. Drainage work on the other hand includes “escape channels from a canal, dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, but does not include works for the removal of sewage from towns”. The Act empowers the state government to officers to exercise general control over all irrigation and drainage works in the state.
Further, the State can issue a notification to apply or use the water of any river or stream flowing in a natural channel or any lake or other natural collection of water for any existing or projected irrigation or drainage work.\textsuperscript{48} In cases where the state does so, the irrigation officers an enter any land or remove any obstruction and may close any channels and do any other things necessary for such application or use of the said water.\textsuperscript{49} The Act further prescribes that any person desiring to use water of any irrigation work has to apply in writing to the divisional or sub-divisional irrigation officer requesting him to construct or improve watercourse at the cost of the applicant.\textsuperscript{50} The Act requires the State to provide suitable means of crossing irrigation works\textsuperscript{51} and also empowers the state to direct a person(s) to construct and maintain a watercourse at their expense.\textsuperscript{52} Moreover, if a person jointly responsible with others for the construction or maintenance of a water course or jointly making use of a water course with others neglects or refuses to pay his share of the cost of construction or maintenance, the divisional or sub-divisional irrigation officer can take legal action. Activities such as desire to construct a new water course,\textsuperscript{53} supply of water from an irrigation work,\textsuperscript{54} levy of various water charges,\textsuperscript{55} preparation of schemes of work for improvement\textsuperscript{56} are all regulated by the divisional or sub-divisional irrigation officer.

The Rajasthan Irrigation and Drainage Rules lay down the procedure for operationalisation of the Rajasthan Irrigation and Drainage Act on matters such as opening of new water courses, introduction of new irrigation, grounds for refusal to grant water, fields liable to be debarred from canal irrigation, distribution of canal irrigation, filling of water tanks for watering of cattle, irrigation from tanks or natural depressions, contracts for water supply for other than irrigation purposes, charges for water supplied for other than irrigation purposes, stoppage of supply improperly maintained water courses, charges leviable for different crops and other purposes etc.

A perusal of the Act and its Rules reveals, strict control of the government over all irrigation and drainage works in the state. As the Act does not specifically talk about minor water bodies, it is not very clear as to whether this Act will need amendment in pursuance of PESA.
6.2 The Manual of Departmental Orders pertaining to Minor Water Bodies in Rajasthan

The manual elaborates in detail primarily the administrative aspect of the Rajasthan Irrigation Department. However, it also refers to the procedure for proposing new schemes for irrigation and proper drainage, the preparation of estimates and specifications, the cost logistics, the maintenance expenses, the canal revenue procedure, checking of irrigation measurement. Again reference to minor water bodies is missing in the manual, as it is primarily administrative in nature.

6.3 The Rajasthan Fisheries Act, 1953 and Rajasthan Fisheries Rules, 1958

The Act provides for the “protection, conservation and development of fisheries in the state of Rajasthan and other ancillary matters”. The Act does not specify the type of water bodies from which fishing is regulated. Thus, by implication, the Act would probably also regulate the fishing from the minor water bodies in the state. However, since under the PESA, the planning and management of minor water bodies has been vested with the panchayati raj institutions, fishing from such water bodies would also be regulated by these institutions. The Fisheries Act and its corresponding rules would hence need certain amendments to reflect the control of the panchayats and in the context of the present study, the women, over the fishing from the minor water bodies in tribal areas of Rajasthan. Presently, the Act empowers the state government to make rules to regulate erection and use of engines, methods of catching fish, prohibit the destruction fish including throwing into water of any solid or liquid substances harmful to the fish, regulate grant of fishing licenses etc. The Rajasthan Fisheries Rules of 1958 further prescribe the procedure for issuing a fishing license, the fees for the same and other ancillary matters relating to regulation of fishing.

6.4 Rajasthan Farmers’ Participation in Management of Irrigation System Act, 2000

One of the most recent state legislation pertaining to irrigation in the state is the Rajasthan Participation in Management of Irrigation System Act of 2000. The Act provides for farmers participation in the Management of Irrigation System and for matters connected therewith. Like all other state legislation on water, this Act does not define minor
water bodies. However, it does define Minor Irrigation System as an irrigation system under minor irrigation project having irrigable command area\textsuperscript{57} upto 2,000 hectares. The Act provides for establishment of farmers organization at three levels and in this regard empowers the Project Authority to delineate areas from command areas into three levels: water user areas, distributary’s area and project area.

At the field level, there was not only ignorance about most of these laws and procedures but also very little was being done to help solve the water shortage. In fact, in the Chittaurgarh District, there were several drying ponds or water bodies, which were not being looked after. The local panchayat officials and the local women claimed that they had no control over the bodies. They did admit that a program to regenerate the water channels was being undertaken but were unaware of what was being done. Even the local partner NGO workers were unclear about the status of the maintenance of the water bodies. This is crucial especially in Rajasthan where shortage of water causes so much havoc every year.

The solution to the problem again seems to lie in the generating awareness amongst the local people and a proactive role of the local NGO. The local NGO can play a crucial role in taking law to the people and in campaigning to protect the rights of tribals in the area.

Women in both the districts felt the need for more wells and hand pumps. However, the funds for such development works have to be sanctioned by the higher tiers of panchayat. This creates a number of problems. Foremost amongst these is that to put forth the need for such hand pump/well, the women need to go attend the panchayat meetings. This is problematic on a number of accounts. Cultural barriers prevent women from attending the meetings on most occasions. Even when such restrictions are overcome, going to attend the meetings is time consuming and costly as there are limited means of transport and the venue of the meetings are far away. Also, going to attend the meetings implies that women have to work harder to finish their household chores. Often, the mother in laws disapprove the younger women from going out as they feel that the house work, which is more economically remunerative, is going to suffer. This is perhaps the main reason why the majority of the women panchayat leaders were middle-aged women who had their daughter in laws to take care of the household chores. Another problem in women’s attendance of panchayat meetings is that
even if they go for meetings, cultural restrictions prevent them from speaking up. Further, even if they speak up since there are representatives from a number of villages vying for the panchayat funds, it is not easy to get funds sanctioned for such activities. It not only depends upon the power of the local people in getting funding from the panchayat but also on the level of need of the other villages in the panchayat.

Notes:

45 Section 3 (ii) of the Act.
46 Section 3(iii) of the Act.
47 Section 4(3) of the Act.
48 Section 5of the Act.
49 Section 6 of the Act.
50 Section 16(1) of the Act.
51 Section 17 of the Act.
52 Section 18(A) of the Act.
53 Section 16 of the Act.
54 Section 20 of the Act.
55 Section 33-41 of the Act.
56 Section 44 of the Act.
57 Command area being an area irrigated or capable of being irrigated either by gravitational flow or by lift irrigation or by any other method from a Government source and includes every such area whether it is called by the name of ‘Command Area’ or by any other name under any law for the time being in force.
Chapter VII
Fieldwork Report

The fieldwork for the present project was conducted during the months of March, April, May, June and part of July 2004. During this period, the structured interviews with the tribal women, men, government officials and non-governmental organizations were conducted in the two tribal districts of Dungurpur and Chittaurgarh. The principal researcher along with three associates lived with the people during the people and tried to bring forth the voices of the women. Described below are some of the key observations and the information gathered during the months.

7.1 Field Observations

• Distance plays an important role in determining women’s participation in Gram Sabha. Women spend at least two hours every morning collecting water alone. In fact a number of women complained that water was not available locally in their villages and that they wanted the panchayat to fund a project for the same. However, women had to travel a considerable distance to attend the panchayat meetings and miss their daily work. Thus less women attend Gram Sabha meetings as compared to Ward Sabha meetings because of the distance of the venue of meetings and absence of transportation facilities.

• Even if women go for Gram Sabha meetings, they do not participate owing to shyness. It seems that the hesitation stems from the fact that traditionally women are not supposed to talk in public and the social belief that women do not know enough to discuss things of public nature.

• Household chores were also seen to be a factor limiting women’s attendance of panchayat meetings, the logic being that meeting or no meeting, household chores have to be performed and participation in panchayat meetings takes women away from their regular duties.

• One of the Panch ladies claimed that she could do so as she had relatively less family responsibilities and was articulate. Further her husband was supportive in her work and did not try to interfere with
her panchayat work. If the work got too much for her, her son helped her. She had become the panch because of the reservation of seat. Although initially she was reluctant to step up to the post, family support encouraged her. The lady panch claimed that there was no discrimination against her in panchayat meetings and that she was given full authority and chance to talk in Gram Sabha meetings.

• Another interesting aspect that came out was that all men and women of the village decide before hand which men and women will speak for their village in the panchayat meetings.

• The women claimed that they were more comfortable in Ward Sabha meetings as compared to Gram Sabha owing to greater familiarity with the members of the sabha.

• With respect to Joint Forest Management, the women claim that their role is to protect forests and to protest against cutting down of trees. They also revealed that the forestry activities were limited to protecting existing forests rather than planting new trees.

• The women felt a severe shortage of fuel wood as the forest department permitted them only to cut dry wood.

• The people also felt the need for more hand pumps and although they had given proposals for the same in the Gram Sabha thrice, their demands were rejected.

• There is imperfect information with the Sarpanch. The women Sarpanch were not aware of the funds available with the Gram Sabha for hand pumps.

• The decisions about fulfilling Ward demands for infrastructure such as hand pumps are taken at the Panchayat Samiti level by the Block Development Officer.

• The BDO consults the Ward Panch for Ward decisions and the Ward Panch in turn has the discretion of consulting ward member.

• The benefit of water schemes such as Swajaldhara is felt. However, people do not want to give money for participating; instead, they are more interested in giving labor to earn wages.

• There appeared to be unity amongst husbands and wives in decision-making. Gender dynamics did not seem to be apparent on surface but there were undercurrents indicating them. Thus for instance, when asked if their husbands dominated them or prevented them from
participating in panchayat matters, the women vehemently declined. They reasoned that though their husbands did not stop them, the division of labor was such that they had no time to attend the meetings. Only in few cases did it openly appear that the women were being suppressed.

- The forest department was accused of planting trees without consulting people.
- Most women who did attend Gram Sabha meetings did so only when they had a personal problem for which they need panchayat intervention. The motive for participation was not to participate but to seek personal relief.
- Even if quorum is not complete for Gram Sabha meetings, signatures are taken later by the officials.
- Gram Sabha meetings in general help in generating awareness about what are the local issues in the village, what developmental works are being carried out etc.
- There seems to be an apparent lack of information about meetings.
- The JFM agreement is still not final in some areas and thus produce is not given to villagers.
- Decision of matters such as placement of hand pumps is taken by the men collectively without consultation of women as such decisions are taken in the panchayat meetings whose venue is afar from the village. The household chores, social restrictions and lack of transportation facilities are some of the reasons why women find it difficult to go for such meetings.
- There is acute water body shortage in the area in general-the ponds have dried and the women want action on it but do not have any suggestion on how to do it.
- There are a number of organizations working in the two districts – Indian Farm and Forestry Development Corporation, Panchayat Mahila Group, Prayas, Mayur Mahila Group, Anganwadi Group.
- Awareness of Gram Sabha meetings did not seem to be an issue.

7.2 Constraints in Women’s Participation in Panchayats

Interviews, discussions and observations with women in both the study districts (some of which are mentioned in the previous sub-section)
all pointed towards a similar direction. Very little participation from the women can broadly be credited to the social structure where the predominant role of the female members is to look after the household and the family, leaving the ‘outside matters’ to the male members. The women themselves identify several constraints in their participation in panchayat matters. While the division of work between male and females seems to play a major role, in places where women do show a keenness to participate, often the family pressure in the form of jibes as to the usefulness of such participation acts as a deterrent. Women almost unanimously complained of disapproval from their mother in law or husbands in respect of attendance of panchayat meetings. Often, women are told that they are incapable of taking ‘intelligent decisions’ for matters of public concern which traditionally are seen as a male forte. Constant drilling of this notion leads to loss of confidence amongst women of their capabilities and often manifests in shyness and hesitation to speak in public meetings. Indeed, I found that barring the women panch; most women were even hesitant to speak with me in public or private. Frequently, whenever asked to respond to a question, women looked towards their husbands for articulation. Most women also expressed that attending panchayat meetings meant longer hours for them as taking time out to participate implied loss of routine work, which had to be done irrespective of such meetings. Women complained that the meetings did not result in anything productive; instead they led to a waste of time. Further, the distance in the venue of meetings from the village of the women appeared to be a major drawback in attracting women to attend. Some women also claimed that family responsibility of in-laws and small children was a deterrent to their participation. Further, the fact that often attendance of meetings can imply loss of crucial day’s wages seemed to play on the minds of women. The women felt that even taking on the office of the panchayat head implied unnecessary headache in absence of suitable remuneration. So far as usurping of women panch’s power is concerned, in most cases the worst was true- the women were merely a pawn in the whole process, the real power vesting with the husbands. However, in one of the villages, the lady panch was actually taking all decisions by herself without the interference of her husband. She claimed that while it was her husband who encouraged her to contest elections in the first place, he did not try to usurp her power. One of the reasons for this could be that the lady in question was indeed very bold and outspoken; the other could be that her husband was more liberal in his attitude.
Chapter VIII
Legal Strategies to Empower Women

At the outset, I would like to state that in all the months that we conducted fieldwork, it appeared that individual family circumstances of women were what made the most difference in their participation and say in panchayats. Legislative changes to empower women, after conduction fieldwork, talking to women and seeing life and circumstances through their eyes appeared to have limited relevance. The area where real change in needed is in the society and the social perception of women and their role in public decisions. The change in perception has to go hand in hand with the legislative changes as law is merely a tool that is a handmaiden of society. Unless the tool is put to use with a concomitant change in the society, the tool would be ineffective. This is not to say that legislative changes are not needed. Listed below are some of the most urgent legislative changes needed to increase women’s participation and say in panchayats.

1. Government welfare departments should place notices in the women’s cooperative/mahila mandal and should conduct legal literacy classes for all women whenever a new policy/law is introduced.

2. Smaller committees of the Gram Sabha comprising only of women should be made into compulsory legal bodies.

3. Mechanisms such as those relating to social audit in Madhya Pradesh for all developmental work carried out by the panchayats should be introduced. Women’s approval for all activities of the panchayats should be mandatory.

4. As has been suggested in the GOI circular of 1997, all Panchayati Raj Institutions, especially gram panchayats, should display all vital information pertaining to development projects, especially receipt of funds and how they are being used in panchayat offices or on a prominent notice board outside the school for the information of the public. Also all records should be open to inspection and members of the public should also be allowed to take photocopies of documents pertaining to developmental projects as also matters
of general public interest by paying a nominal charge. Further, all bills, muster rolls, vouchers, estimates and measurement books, also the criterion and procedure for selection of beneficiaries, should not only be open for inspection but also photocopies should be easily available.

5. Formation of a mahila mandal as a sub committee of the ward should be made mandatory as a collective voice of all women in the village.

6. Reservation of seats for women for all wards should be made mandatory.

7. Having two panches, one male and one female, should become mandatory.

8. Decisions for placement of water pumps should be delegated from the BDO to the Ward Sabha.

9. Setting up Panchayat training centers and training of all elected members of the panchayats at all tiers should be made mandatory prior to taking office.

10. Reservation for women for the post of Up-Pradhan/ Up-Sarpanch of the Gram Panchayats should be made mandatory.

11. It should be ensured that there are adequate number of women panchayat secretaries and that not more than two Gram Panchayats are allotted to one Panchayat Secretary/Village Development Officer.

12. It should be ensured that every State Government opens a ‘toll-free help line’ for Panchayat women at the state and district levels to attend to urgent needs (adverse or otherwise) of elected women functionaries of PRIs in terms of police assistance, information dissemination, legal assistance, counseling, etc., with a view to strengthen women’s participation in local governance. Set up a national center in Delhi to co-ordinate all the State-level help lines and act as a resource center.

13. There should be provision for sub-quorum for women in the Gram Sabha.

14. Representation should be given to women on all committees of the panchayats at all levels and it should be ensured that parallel committees are not formed.
15. Provisions should be made to ensure that the male members do not take on the powers of the female panchayat leaders. Introduction of provisions similar to those in Uttar Pradesh restricting husbands of panches from entering their wives’ office and using official cars would be useful.

16. Provisions should be made to provide some reimbursement to women panchayat leaders for giving up their daily chores and looking after panchayat matters.

Other than these strategies, clarity is required in most of the statutes, as discussed in the preceding chapters. A number of statues have not been amended for years. This is a critical oversight as the laws become outdated and needs to be dynamic enough to keep abreast of the changing realities.
Annexures

Annexure I

History of Schedule V Areas in India

The concept of Scheduled Areas in India, including Schedule V areas, was originally an administrative classification made by the British colonial government. The British Government demarcated certain areas which were predominantly inhabited by tribals or ‘indigenous people’ as Scheduled Districts’ and prescribed special administrative measures to govern such areas. The first significant measure taken by the government to deal with such areas as a class was the Scheduled Districts Act of 1894. The Act enabled the executive to extend or exclude the application of ordinary laws in force in the rest of peninsular India from these areas. However, it also empowered the Executive Government to extend any enactment in force in any part of British India to such ‘Scheduled Districts’ subject to any modifications or special conditions.

In the year 1918, the Montague – Chelmsford Committee, appointed for political reforms in the country in their report, re-considered the administration of these backward areas. The committee suggested that the political reforms contemplated for India could not be applied in the same way to ‘primitive people’ as ‘there were no material on which to found political institution’. It thus recommended the exclusion of such primitive people and areas from the normal laws of the provinces. The backward tracts were thus excluded from the purview of the reforms and were administered by the heads of the provinces.

The recommendations of this committee found voice in the subsequent Government of India Act of 1919. The Government of India Act of 1919 classified backward areas into two categories: areas ‘wholly excluded’ from the scope of administrative reforms with the effect that neither the Central nor the Provincial Legislature could make laws for these areas, all powers thereof vesting with the Governor and areas that were to be ‘partially excluded, that is to which the normal laws could be applied with modifications.
The Simon Committee of 1929 appointed for recommending to the British government the model of the future Constitution of India, opined that the perpetual isolation of Scheduled Areas was not a satisfactory long term solution and that it was the need of the hour to educate people in these areas in order to make them self-reliant. Accordingly, the committee recommended the responsibility of these areas should vest with the Center with the Governor playing a lead role in the Provinces. It was thus proposed that backward tracts should be classified into Wholly Excluded Areas and Areas of Modified Exclusion. This proposal was however not adopted in the Constitutional Reforms of 1935.

The Government of India Act of 1935 classified backward tracts as ‘excluded’ and ‘partially excluded’ based on the intensity of tribal population. The excluded areas were placed under the direct rule of the Governor while the partially excluded areas were put under the ministerial responsibility with the Governor having power to overrule the ministers. Further it was provided that laws of provincial India were to apply to partially excluded areas subject to modifications suggested by the Governor.

The Cabinets Mission Statement of 1946 iterated the need for a special scheme for tribal and excluded Areas. The Constituent Assembly accordingly asked the Advisory Committee on the rights of citizens, minorities and tribal and excluded areas to formulate a scheme for the administration of these areas. Though the report of the Committee was received too late, special provisions for the administration of tribal areas were incorporated in the Constitution.

The Constitution of India makes a distinction between tribal areas of North-East India from the tribal areas in the rest of the Country. Article 244 (1) provides that the provisions of the Fifth Schedule to Constitution shall apply for the administration and control of the Scheduled Areas and Scheduled Tribes in all of India barring the states of Assam, Meghalaya, Tripura and Mizoram.

The Fifth Schedule to the Constitution lays down the special provisions for administration of scheduled areas in all states other than Assam, Meghalaya, Tripura and Mizoram. The Schedule defines Areas designated as Schedule V Areas as those, which are so declared by the President of India. The President has the power to not only declare certain areas as Scheduled Areas, but also to alter the boundaries, add
or rescind areas from being Scheduled Areas. The Schedule envisions a central role of the Governor of the state in the administration of these Areas. The Governor has to submit to the President an annual (or when so specifically asked) report regarding the administration of the Scheduled Areas in their State. Further, the Governor is also empowered to make any regulation for the peace and good government of any of these areas (subject to the assent of the President and consultation with the Tribes Advisory Council). He can, additionally direct/limit the application of any particular Act of Parliament or of the Legislature of the State to a Scheduled Area or any part thereof in the State and can also specify modifications/exceptions in application of Central/State Laws to Scheduled Areas. Another unique feature of the Scheduled Areas is the Tribes Advisory Council (TAC). The Fifth Schedule provides for the establishment of a council in all Scheduled Areas and in areas having scheduled tribes by a special direction of the President for giving advise on matters of welfare and advancement of tribals as may be referred to them by the Governor.

In the State of Rajasthan two districts, namely Banswara and Dungarpur have been declared as Schedule V Areas. Further, 12.44 per cent of the total population of the state is that of Scheduled Tribes.

**Note:**

 Areas inhabited solely by tribals were classified as excluded while areas with a population comprising of tribals and non-tribals were declared to be partially excluded.
Annexure II

History of Decentralized Governance in India

Decentralized governance in India has been prevalent in India since the ancient times.

There exist records of panchayats being set up by rulers on the basis of castes. However, these *quomi panchayats*, as these caste panchayats were called, disintegrated in the colonial era and were replaced by a slightly different model of local self-government. The first accountable and elected representation created by the British Government was the *municipal council in Madras in 1667*, which was largely modeled on the lines of Town Councils in England. Subsequently, similar bodies comprising of nominated members having certain powers to levy local taxes were introduced in other major towns. Though the traditional village councils ceased to get importance in this era, they continued to survive in the form of ‘village communities’.

It was in 1835 that they were recognized by the then Viceroy Sir Charles Metcalfe and were termed as ‘little republics’. In 1870, following Lord Mayo’s resolution, legislation by the name of *Bengal Chowkidari Act of 1870* was enacted. This Act empowered the District magistrate to set up Panchayats of nominated members in the village with powers to levy and collect taxes to pay for the chowkidars engaged by them.

Subsequently, Lord Ripon initiated a resolution in 1882 providing for local bodies comprising of elected non-official members. The *resolution of 1882* envisaged a local self-government model at the District level.

The principles enunciated in Lord Ripons Resolution were further elaborated upon by the *Royal Commission in their report on decentralization in 1909* and under the *Montague-Chelmsford Reforms of 1919*. Following this, a number of legislations were passed for the establishment of village panchayats in all provinces.

The concept of decentralized governance was again propagated by Gandhiji who was of the firm belief that “Independence must begin at the bottom. Thus every village will be a republic of panchayat having full powers”. During the course of debates over the formation of the Indian Constitution, concern was expressed that the draft constitution, being largely modeled on the Government of India Act of
1935 envisaged a centralized model of governance with no mention of village republics. However, despite strong protests against provisions for village republics in the constitution by the father of the Constitution, Dr. B.R. Ambedkar, recognizing the historical background and importance of panchayats as democratic institutions at the grass-root level, a provision was made in Article 40 in Part IV (Directive Principle of State Policy) of the Constitution that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government. The provisions of Article 40 were interpreted differently by different states who vested varied powers and functions upon the PRIs. Thus, a need was felt to restructure and strengthen the panchayati raj institutions in the country to enable them to function as effective institutions of Rural Institutions. Accordingly, two expert committees under the chairmanship of Shri Balwant Rai Mehta and Shri Ashok Mehta were set up by the central government in 1957 and 1978 respectively. Despite the setting up of these committees, Panchayats failed to emerge as institutions of self-governance. It was thus felt that though the Panchayati Raj Institutions had been in existence for a long time, these institutions had been unable to acquire the status and dignity of viable and responsive people’s bodies due to a number of reasons including absence of regular elections, prolonged suppression, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources. This, it was felt, created an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them. Accordingly, it was proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha at the village level, direct elections to all seats in Panchayats at the village and intermediate level, reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population; reservation of not less than one-third of the seats for women amongst other things.

Accordingly the 73rd Constitutional Amendment Act was passed on 24th April 1993. The Amendment by conferring Constitutional status on the Panchayati Raj Institutions (PRIs) marked a new era in decentralized governance. The Amendment Act is significant for a number of reasons.
(a) The Amendment Act envisages Panchayats as ‘institutions of self-government’. For this, it mandates that the State Legislatures are to enact laws to endow the Panchayats with the necessary powers and authority. The Act further provides for creation of Panchayats at three levels—village, block and district level. In addition to this it provides for the establishment of a village council called the ‘Gram Sabha’ comprising of all residents in a particular village.

(b) The amendment envisages the establishment of a democratic decentralized development process through people’s participation in decision-making, implementation and delivery. To achieve this end, it spells out the broad realm of powers, duties and responsibilities of the Panchayats. These include (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice. In order to achieve this objective, the Constitution provides for devolution of powers and responsibilities upon panchayats at appropriate levels. 29 Subjects listed in the Eleventh Schedule of the Constitution have been identified for devolution to the PRIs. For the purpose of the present study, the most significant functions that are sought to be devolved under the Eleventh Schedule are minor irrigation, water management and watershed development, social and farm forestry and minor forest produce.

(c) The 73rd Amendment to the Indian Constitution for the first time in the history of Indian polity, provided for a minimum number of seats and political offices in the panchayats for not only Scheduled Castes (SC), Scheduled Tribes (ST) and Backward Classes (BC) but also for women in general and for women belonging to SC, ST and to BC. Article 243D reads “(1) Seats shall be reserved for – (a) the Scheduled Castes; and (b) the Scheduled Tribes, in every Panchayat and the number of seats of 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 the 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.

In the context of meager representation of women in the National and State legislatures vis-à-vis their population, reservation of not less than one-third of the total number of seats and posts of chairpersons of panchayats should be considered a significant landmark in the process of political empowerment of women. This reservation particularly significant, as women continue to occupy less than 10 per cent seats in the Parliament and State Legislature even though they constitute almost half of the electorate in the country⁵⁹. However, it has been pointed out that one of the shortcomings of the Amendment has been the provision for allocation of reserved seats by rotation. It has been argued that the provisions in the Amendment for reservation of seats by rotation to different constituencies would imply that a woman or a SC/ST elected to a Panchayat will normally have a term for five years with no prospect for re-election.⁶⁰

Notes:


⁶⁰ Saxena, N.C. *Issues in Panchayat.*
Annexure III

Text of the Constitution (73\textsuperscript{rd} Amendment Act), 1992

\textbf{243.} Definitions – In this Part, unless the context otherwise requires:
\begin{itemize}
\item[(a)] District – a district in a State;
\item[(b)] Gram Sabha – a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;
\item[(c)] Intermediate Level – a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part;
\item[(d)] Panchayat – an institution (called by whatever name) of self-government constituted under article 243B, for the rural areas;
\item[(e)] Panchayat Area – the territorial area of a Panchayat;
\item[(f)] Population – the population as ascertained at the last preceding census of which the relevant figures have been published;
\item[(g)] Village – a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.
\end{itemize}

\textbf{243A.} Gram Sabha – A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.

\textbf{243B.} Constitution of Panchayats – (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

\begin{itemize}
\item[(2)] Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding 20 lakhs.
\end{itemize}

\textbf{243C.} Composition of Panchayats – (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats.
Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation:

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within:

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.
(5) The Chairperson of:

(a) a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

243D. 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 the 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.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243E. Duration of Panchayats, etc.

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed:

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.
(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243F. Disqualifications for membership:

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat:

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) if any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

243G. Powers, authority and responsibilities of Panchayats.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to:

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.
Powers to impose taxes by, and Funds of, the Panchayats

The Legislature of a State may, by law:

(a) authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

Constitution of Finance Commission to review financial position.

(1) The Governor of a State shall, as soon as may be within one year from the commencement of the Constitution (Seventy-third Amendment) Act, 1992, and thereafter at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor as to:

(a) the principles which should govern:

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;
(b) the measures needed to improve the financial position of the Panchayats;

(c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.

(2) The Legislature of a State may, by law, provide for the composition of the Commission, the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

(3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the Legislature of the State may, by law, confer on them.

(4) The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State.

243J. Audit of accounts of Panchayats – The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts.

243K. Elections to the Panchayats:

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.
(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats.

243L. Application to Union territories.- The provisions of this Part shall apply to the Union territories and shall, in their application to a Union territory, have effect as if the references to the Governor of a State were references to the Administrator of the Union territory appointed under article 239 and references to the Legislature or the Legislative Assembly of a State were references, in relation to a Union territory having a Legislative Assembly, to that Legislative Assembly:

Provided that the President may, by public notification, direct that the provisions of this Part shall apply to any Union territory or part thereof subject to such exceptions and modifications as he may specify in the notification.

243M. Part not to apply to certain areas:

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to:

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the hill areas in the State of Manipur for which District Councils exist under any law for the time being in force.

(3) Nothing in this Part:

(a) relating to Panchayats at the district level shall apply to the hill areas of the District of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists under any law for the time being in force;
(b) shall be construed to affect the functions and powers of the Darjeeling Gorkha Hill Council constituted under such law.

210A [(3A) Nothing in article 243D, relating to reservation of seats for the scheduled castes, shall apply to the State of Arunachal Pradesh.]

(4) Notwithstanding anything in this Constitution:

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.

243N. Continuance of existing laws and Panchayats: Notwithstanding anything in this Part, any provision of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy-third Amendment) Act, 1992, which is inconsistent with the provisions of this Part, 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 such commencement, whichever is earlier:

Provided that all the Panchayats existing immediately before such commencement 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 a Legislative Council, by each House of the Legislature of that State.

243O. Bar to interference by courts in electoral matters. Notwithstanding anything in this Constitution:
(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.
Annexure IV

Text of Panchayat (Extension to Schedule Areas) Act, 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 provision 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 safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;
(e) every Gram Sabha shall

i. approve 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 prospecting licence 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.
Annexure V

Format of Questionnaire for Field Work

1. Name
2. Age
3. Caste
4. Whether ST or not
5. Attendance of Gram Sabha Meetings
6. Awareness of Gram Sabha Meetings
7. Participation in Gram Sabha Meetings
8. Constraints faced in attending
9. Level of dependence on minor water bodies and minor forest produce
10. Difficulties faced in accessing and controlling minor water bodies and minor forest produce
11. What can be done to increase women’s control over minor water bodies and minor forest produce
12. What constitutes minor water bodies and minor forest produce in the local area
13. Is there usurping of power by male members-Is there opposition from family members in attending and participating in panchayat members
14. Is there a local Mahila Mandal
15. How active is the Mahila Mandal
16. Is there any other group or body that promotes women’s rights
17. Is there a register giving the number of women who participate in Gram Sabha meetings
18. Are minutes of the Gram Sabha meetings prepared and maintained
19. What is the follow up action in general on the resolutions taken in the Gram Sabha meetings
20. Are women part of the forest committees under Joint Forest Management
21. Do women get a say in prioritizing the kind of forests that are planted
22. Do women get to control the disposal of forest produce
23. Are women part of the participatory irrigation management


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Abbreviations

**PESA**: Panchayat Extension to Scheduled Areas Act, 1996

**Rajasthan PESA**: The PESA as adapted in Rajasthan, passed in 1999

**GOI**: Government of India

**PRI’s**: Panchayati Raj Institutions

**VFC**: Village Forest Committee

**WUC**: Water User Committees

**U.P.**: Uttar Pradesh

**MFP**: Minor Forest Produce

**MWB**: Minor Water Bodies

**MoEF**: Ministry of Environment and Forest

**JFM**: Joint Forest Management

**VFPMC**: Village Forest Protection and Management Committee

**Govt**: Government

**WAS**: Women’s Advisory Sub-committee