

11th Session of the United Nations Permanent Forum on Indigenous Issues
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Intervention on Agenda Item 3: *"Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)"*

**Joint Intervention: Asia Pacific Indigenous Youth Network, Philippines;
Indian Confederation of Indigenous and Tribal Peoples, India & Adivasi Buddhijivi Manch
(Indigenous Intellectual Forum), Ranchi India. Bhaiya Ram Munda Foundation, Ranchi
India.**

By: Meenakshi Munda

Thank you Sir for your kind consent to allow me to speak on agenda item no. 3

The Indigenous People in India have century old traditional system of local self governance known by various names at the village and intermediate level responsible for overall development of Indigenous communities. Historically the local institutions of self governance started losing their authority with the advent of British colonial powers. Even after India's independence in 1947 various legislations made the system ineffective and dysfunctional. However, the Constitution of India provides a number of rights and special privileges to the Scheduled Tribes of India. These certain constitutional provisions safeguard and promote the interest of tribal communities in India. Hence PESA as an Act came into existence on 24th December 1996 for the extension of the provisions of Part IX of the Indian Constitution relating to the Panchayats to the Scheduled Areas.

PESA or The Provisions of Panchayat (Extension to Schedule Areas) Act, 1996, is a landmark legislation passed by the Indian Parliament, which provides for special provision in Schedule (Indigenous) areas covering the 9 states of Indian Union for local self governance. "Panchayat" means an institution of self government constituted under Article 243B of Indian Constitution for rural areas of India. These Panchayati forms of local self rule are normally constituted in each States of Indian Union and provides for institution of local self government at Village, intermediate and district levels in accordance with the provisions enshrined in the article. Constitution of India (73rd Amendment) Act, 1992 provided the constitution of Panchayat under Part IX of Constitution for all over **India except the Schedule Areas (Article 243M)**. Later in 1996, PESA was enacted with a view to give special consideration due to presence of indigenous communities who inhabit the 9 states of Indian Union under Schedule Areas. After enactment of PESA, a number of States tried to enact laws in consonance with PESA (e.g., Jharkhand Panchayati Raj Adhiniyam 2001) but the provisions of original PESA Act, 1996 have been diluted. Surprisingly to say that the state legislatures of all the 9 states have violated the PESA provisions as they have established the 3 tier

panchayat system in the schedule areas. The other aspect is the poor implementation of the same due to lack of awareness of provisions of PESA Act. Hence a need is felt among the Indigenous community that a movement be initiated to look into the political, economic, socio-cultural, environmental and legal aspects needed for phased implementation of PESA Act. PESA is a source of empowerment for traditional village councils prevalent in Indigenous areas.

Further, the Gram Sabha or institution of local self government at village level in Scheduled Areas (under Vth Schedule are states with predominant areas of significant indigenous people) has been endowed with special powers which to certain extent gives autonomy and brings into existence tribal self rule. Further there is need to constitute **Autonomous District Councils under Section 4(O) of PESA Act** instead of Zila Parishads as seen in the three tier Panchayati Raj system. Then under the provisions 4(I), 4(M) 2 and 4K of PESA Act, 1996 land acquisition, collection of forest produce and mining lease for minerals in Scheduled areas can only be permitted through prior consent of Gram Sabha. PESA Act strengthens the administrative structure of Indigenous people, Gram Sabha at village level and Autonomous District Council at district level.

Sir this is a violation of article 23 and especially 37 of United Nations Declaration on the Rights of the Indigenous Populations.

In the light of above statement we would like to make the following recommendations:

1. We demand for rectification of PESA by the Government of India, law and justice department to the Schedule Areas and also request special rapporteur for his intervention so that the UNDRIP article 37 is not violated.
2. We also demand for proper implementation of PESA in schedule areas with special focus on formation of Autonomous District Council for proper and good governance.

Thank you for your kind attention.

NB: A brief introduction to PESA has been attached along with the paper for your kind perusal.