Chapter Two

Role of Traditional Tribal Institutions and Modern Panchayati Raj Institutions in Forest Management: Special Reference to Orissa
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In this chapter, an attempt has been made to discuss the role of traditional and statutory institutions (Panchayati Raj Institution) in forest management. In every tribal society, the traditional institution is the general body, which enjoys highest authority to control and command on various activities of the village. In the context of management of forest, the traditional institution preserve, protect and manage the forest resources through the existing custom and norm of the tribal village. In the democratic decentralisation, the Panchayati Raj Institution has been introduced at the grass root level where the people can participate in the decision making process. The significant development has come into force in the fact that, under the banner of PESA, panchayat has empowered to preserve, protect and manage the local forests. This Act endows special authority to the Gram Sabha to manage minor forest produce at the village level. Within this backdrop, this chapter deals with the role of traditional and statutory institutions in the forest management in Indian in general and Orissa in particular.

Historically, the tribals of India have adopted the nature as their habitats. Their subsistence pattern, economic, social institutions, beliefs and practices have been closely linked with the environment. Since time immemorial tribals have been living in the forest, hills and naturally isolated regions, known by different names. The popular names are Adivasi (first-settlers), Vanjayjati (castes of forest), Vanvasi (inhabitants of forest).

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Janjati (folk people), Adimjati (primitive people), Pahari (hill-dwellers), Adimajati (original communities), and Anusuchit Janjati (scheduled tribes).²

The relationship between tribals and forest has often been called symbiotic, i.e., the two depend on each other like the mother and the foetus. It clearly reflects that their dependence is not unilateral but that the tribals depend on the forest and the forest in its turn depends on them for its preservation and continuity. The social, religious and economic systems of the tribals revolve around the forest. A set of religious myths and social customs were built around the forest to ensure that economically important trees were protected, human needs were met and the species that were more commonly available were equitably distributed. Given the extent of their dependence, it is not surprising that they have built such a system to treat forests as a renewable resource.³

Tribal and Forest:

Since time immemorial, forest is the way of life for the tribal people and they depend on forest for their survival. A large number of tribal communities depend on the collection of forest products or hunting being their main occupations. Even the tribal communities who depend on handicrafts, the raw materials are mostly collected from the forests and thus they depend on forest indirectly. Broadly, the tribal depend on forest for food, which contains fruits, plants, flowers etc.

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(i) Source of Livelihood:

Forest is the major source for the survival of tribal people. They use fruits, roots, and jungle leaves for their food. To quote John Deeney and Walter Fernandes, "the food habits of a semi-Hinduis ed tribe like the Sauras of Orissa show their great dependence on the forest. While their staple food is rice, one of their favourite foods is flat-cakes prepared from rice flour, pith of the sago palm and bones of animals. Another common dish is the pudding from mahua (Bassia latifolia), flowers and tamarind. Their most favourite dish is meat, got by hunting. Moreover, field rats are commonly eaten. Besides, they collect a large number of wild herbs, edible leaves, berries, roots and fruits from the forest."  

Besides various leaves, fruits, seeds and plants, the tribals also use the flowers in their food items. The best known among the flowers is Mahua which has almost become a symbol of tribal diet from Rajasthan right up to Western Orissa and is found in all the tribal areas of Gujarat, Maharashtra, Bihar and Madhya Pradesh. Mahua flowers are also fermented into alcohol and fruits are used as food. The Bel (Aegle Marmalos) is another fruit whose pulp is eaten in most tribal areas. In parts of tribal Bihar, particularly Singhbum where the jungle katai (cut the jungle movement is strong, Sal (Shorea robusta) has come to be identified with tribal culture. Its leaves, bark, flowers and fruit are used either as medicine or as food. Tendu is another fruit common in many tribal areas and the leaves of this plant are used for beedi-rolling. Besides these, the tribals use

\[\text{Ibid.}, \text{p. 51}.\]
other fruits like *ramphal* (Anona reticulata), *sitaphal* (Anona squamosaosum), mango, jackfruit, *jamun* (Eugenia jambulana), tamarind etc.\(^5\)

Shifting cultivation is one of major sources for the sustenance of the tribal people. It is also referred to as Jhum or slash and burn cultivation. In Andhra Pradesh and Orissa it is also known as *podu* and among the tribals of Southern Orissa it is called *bogodo*.\(^6\)
The tribal people cut down and burn a particular part of the forest area and sow seeds in the fertile ashes. Many tribes in South India, Central India, Chhota Nagpur and Bengal, slopes of the Himalaya regions and especially North-East India practice shifting cultivation.\(^7\) Also, the tribals from the Malayalars of Malabar in Kerala, to the Baigas of Madhya Pradesh, all the Naga tribes, the *Khasis* of Meghalaya, the *Khonds* and *Saoras*. *Pauri Bhuiyan* of Orissa have been practising this cultivation.\(^8\) Besides this, the tribal people use the forest resources for their house construction and also collect firewood.

The health care pattern among the tribals is very much connected with the forest. The tribals traditionally depend on forests for medicinal plants for the treatment of diseases.\(^9\) Despite a well-advanced allopathic health care system in the country today, the tribals mainly depend on forest for their health care. Most medicine-plants which the tribals know and access from the forest are gooseberry, *ashoka*, banyan, *bela*, guava, *jamun*, *kendu*, *kusum*, mango, *neem*, *tulsi*, *sal* etc. The tribals collect the roots, branches, leaves, bark etc. of the various trees and plants for the medicine purpose.

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\(^1\) Ibid., pp. 51-52.  
\(^2\) Ibid., p. 50.  
\(^4\) John Deeney and Walter Fernandes, op cit., p. 50.  
Moreover, the medicine-plants are commonly available throughout the country, but its identification and use pattern differs from state to state. In Kerala, the medicine plants identified are at least 39 species of roots, 15 of fruits, 30 of leaves, 12 of barks and many kinds of latex, flowers and other plants and herbs for common use. In West Bengal, the tribals use at least 900 herbs and plants for treatment of ailments such as jaundice, epilepsy, snakebite, etc. In states like Orissa and Madhya Pradesh, about 40 types of trees and more than 50 kinds of herbs are used for medicinal purpose.  

(ii) Source of Economy:

In the tribal societies, forest is the main source of economy. They collect the Non-Timber Forest Produce (NTFP) and sell in the market and earn money. It also, provides employment to the tribal people, particularly to the women of the tribal society. A large number of tribals collect Sal and Kendu leaves, Mahua flowers, fruits, resins, lac etc. In Bihar, Orissa, Madhya Pradesh and Himachal Pradesh these forest products support the economy of the tribal people.

(iii) Socio-Cultural Pattern:

Traditionally the socio-cultural system of the tribal people is closely linked with the forest. The tribals still love to live in their original natural abode consisting of hills, forest, rivers, soil and practised their traditional way of living, rituals, customs, dance, music and traditional belief system. Their traditional beliefs and practices have helped

10 John Deeney and Waler Fernandes, op cit., p. 53.
them in the preservation of their age-old culture and along with it the conservation of ecology of this country.\textsuperscript{12}

In the tribal communities, the presence of sacred grove is noticed. It is such a concept of tribals, which ultimately manifests their world. The tribals believe that the deities, representing various elements of nature such as sun, rain, fire etc. reside in these sacred groves. The process of socialisation among the tribals inculcates the knowledge and importance of these sacred groves. Even, the young tribals are taught to respect nature through sacred groves. Moreover, the tribal people do the perform rituals to certain trees such as \textit{Peepal}, \textit{Tulsi}, \textit{Neem}, \textit{Bel} etc. To quote Buddhadeb Chaudhuri, \textit{Sal} (\textit{Shorea robusta}) is worshipped by the \textit{Santals} during \textit{Sarhul} worship.\textsuperscript{13}

The Orissa Context:

The hills and forests of Orissa was dominated by the tribal population which exhibited several cultures and diversity of customs and practices. Traditionally, the tribals of Orissa have been primitive and secluded that they could not enter into the mainstream life.\textsuperscript{14} Orissa occupies a special position in the tribal map of India for its tribal dominance. Barring the state of Nagaland, where all the Naga groups are declared as Scheduled Tribes. Orissa has the largest percentage of tribals,\textsuperscript{15} which is 22.21 per cent of the state’s total population.\textsuperscript{16} The tribals have been living in almost all districts of Orissa.

\textsuperscript{12}Amitabha Sarkar and Smira Dasgupta, op cit., p. 134.
\textsuperscript{13}Buddhadeb Chaudhuri, op cit., p. 239.
Primarily, the hill-tracts of Orissa has predominantly inhabited by the tribal people.\textsuperscript{17} The tribal are mostly found in the districts of Koraput, Rayagada, Naurangpur, Malkangiri, Kalahandi, Nauapara, Kandhamal, Baudh, Keojhar, Sundargrah and Mayurbhanj.\textsuperscript{18} The most prominent tribal of the state are Khandas, Sabaras, Santhals, Bhuiyas, Juangas and Gandas.\textsuperscript{19}

\textbf{Tribals Dependence on Forest:}

Traditionally the tribal communities of Orissa have been depending on forest for their survival because of their low socio-economic status.\textsuperscript{20} Primarily, they are depending on forest for food, fuel, housing, medicine and recreation and the social, religions and cultural identities derived from the forest.\textsuperscript{21}

The food pattern of the tribal communities mainly consists of forest products, viz., roots, fruits, leaves and flowers.\textsuperscript{22} Moreover, they collect various fruits like Mango, Tamarinds, Jackfruits, Black berry, Bhalia, Podoy, Khojur koli etc. and also among the roots, these communities collect Nangol Konda, soft Bamboo shoots, etc. They also use various leaves and mushroom as vegetable. This argument is supported by R. N. Pati in his study on Food and Nutrition situation in Koraput district.\textsuperscript{23}

\begin{footnotesize}
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\item \textsuperscript{17} J. K. Shamal, op cit., p. 163.
\item \textsuperscript{18} Tribes of Orissa, available in \url{http://www.orissa-tourism.com/tribesdata.htm}, Accessed on Dated 4.5.2006.
\item \textsuperscript{19} J. K. Shamal, op cit., p. 163.
\item \textsuperscript{20} Walter Fernandes, Geeta Menon and Philip Viegal, Forest, Environment and Tribal Economy, New Delhi: Indian Social Institute, 1988, p. 148.
\item \textsuperscript{21} Ibid., p. 150.
\item \textsuperscript{22} Manoj K. Pradhan, State of Orissa's Environment, Bhubaneswar: Council of Professional Social Workers, 1994, p. 328.
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Shifting cultivation is an age old practice among different tribes\textsuperscript{24} in Orissa. Even the proficient agriculturists like *Lanjia Saoras* build superb terrace on hill slopes for shifting cultivation. The economic backwardness is the main reason of this shifting cultivation in every tribal society. It also forms a part and parcel of their culture and the way of life. The ritual practice, social organisation and the recreational activities are intertwined with the practice of shifting cultivation that it is very difficult to isolate it from their culture. Further, extensive fertile lands were not available in the areas where particularly the primitive tribes are living. They are generally living in the tops or slopes and exploited the surrounding areas for cultivation.\textsuperscript{25}

The shifting cultivation has been practised among many tribes in Orissa. The *Kondha, Saura, Koya, Paraja, Didayi, Dharu* and *Bonda* of Southern Orissa and *Juanga* and *Bhuiyan* of Northern Orissa are engaged in this practice known as *Podu*. Saura, Kondha and Gadaba tribes construct terraces in hill areas to conserve soil and water through stone and boulder packing. Of course the shifting cultivation has resulted in the destruction of forest. But, in reality the tribal people destroy the forest in order to meet their survival needs.\textsuperscript{26}

The socio cultural practices of the tribals have been closely linked with the forest. Tribals worship nature and their festivals as well as religious activities are connected with land and forest. They worship the nature to fulfill all their needs. The tribals call their forest god in different name like the *Bhinjals* and *Parajas* called “*Dangar Devata*”. Bandas “*Uga* and *Remngbori*”, *Kolha* (Mundas) “*Bura Bonga*”, *Khonds Laipenu*. The

\textsuperscript{24} S. S. Shashi, op cit., p. 98.  
\textsuperscript{25} J. K. Shamal, op cit., p. 168.  
\textsuperscript{26} Walter Fernandes et al., op cit., p. 148.
communal hunting is another integral part of tribal culture. Mostly the tribal people go for annual communal hunting after the “Chaitra Parab” in the month of March-April. The tribals begin the journey of hunting after a ritual of worship and the villagers have to strictly adhere to rules and norms of hunting. The tribes like Santal, Parajas, Koyas, Bhuyans, Siauras keep to this practice.27

The above argument is backed by Upali Aparajita in her study on Dongria Kondha in Orissa. Aparajita discussed that, the rituals play a major role in the Dongria psyche. They always worship the mother Earth to make their society live in plenty and prosperity. Their symbiotic relationship with the forest also has a ritual base in their practice of the ritual hunting expedition. Hunting for the Dongrias was not the indiscriminate killing of animals, but only a symbolic act of killing to maintain balanced ecosystem.28

Traditional Tribal Institutions:

The tribal traditional institution is a body, in which all villagers are members. They sit together to discuss village affairs of diverse nature, viz., socio-economic condition of the village, preservation of resources, etc. There is never any formal voting and each man states his opinions.

In Orissa the Pami or Hill Bhuiya people have a panchayat organisation, an assembly of village elders presided over by the Nayak (secular head-man) and Dihuri (sacred headman). Among the hill Juangs, the village council consists of the headman.

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the priest (both hereditary offices) and a few elders. They hear the appeal of any applicant in his own house, hear his problems and take decisions accordingly. They arbitrate in all matters pertaining to the social, religious and economic life of the village.\(^\text{29}\) This argument is supported by N. Patnaik in his study on Narayanpatna block of Koraput district. He opines that, every village had and still continues to have its own tribal council as part of the political organisation. They used to constitute the infrastructure of the erstwhile mutha\(^\text{30}\) administration. All the tribal adults of the village are members of the tribal council. The head of the village tribal council, who is also the headman of the village, is called Saonta or Saonti. He is the secular head in charge of socio-cultural activities of the village and is the revenue chief at the village level on behalf of the Mustadar. Parallel to the secular position held by the village headman, is the religious head called Jani who presides over all the religious functions organised by the tribals of the village. In addition to these two secular and religious heads, the astrologer, called Disari, who fixes auspicious moments for construction of new houses, reclamation of forest areas for shifting cultivation.\(^\text{31}\)

In another study, Upali Aparajita discussed that the traditional village council of Dongria Kondh in Niyangiri hills of Rayagada district, is a powerful organisation but it is largely socio-religious in character. All the adult male members of the village constitute it. It generally meets early in the mornings at the Sadar Ghar. It decides almost all socio-religious matters of the village, viz., marriage and funerary rites. The

\(^{29}\) L. P. Vidyarthi and B. K. Rai, op cit., 214.

\(^{30}\) During the pre-independence days, the whole estate of Jeypore of which Narayanpatna was a part, was divided into a number of administrative sub divisions known as mutha.

determination of dates of festivals and all other religious issues are also under its direct control. This village council is also the ultimate arbiter of ensuring peace and justice, solving disputes and regulating social life by the enforcement of customary laws. Thus, the village council or the village organisation is a general body having highest authority to control and command the affairs of the village.

Traditional Institutions and Forest Management System:

Forest is the major source of sustenance for the tribal people. They have been using the forest resources for their socio-economic and cultural life. Thus, the clan or lineage of the first settlers, who had cleared the forest and established the village, always claimed customary ownership of the land and land-based resources within the traditional village boundaries. In this context, to quote B. K. Roy Burman’s suggests that some of the khuntkatti communal forests were better managed than the reserved forests under direct management of Forest Department.

The traditional institutions preserve and protect the forest resources according to the custom and practice of the tribal society. Therefore, to understand the role and function of the traditional institution in the management of the forest resources, we shall go into the tradition, myths, and customs of the tribal society and also the restriction to

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use the forest and protection of its resources for the larger interest of the tribal communities.

(i) Beliefs and Myths:
The myth and believe system of tribal society has close links with the forest. The forest is
the sacred place for the tribal people and they built their myths around the forest, primarily because, mere social control without divine legitimation is difficult to enforce in a traditional society. This belief system has been closely related to the preservation of the species, which they need the most for their economy or ecological balance. Also the belief system has been linking the survival of the tribal with the preservation of the species. Moreover, the myths of tribal people are centered round the creation of the world or the origin of these communities, which attributed to some tree or animal.

The beliefs and myths, apart from signifying the need for preserving a species also show a family relation between the tribe and the species concerned. In Kalahandi district of Orissa, the Kond tribes do not harm the salap tree because it is believed that when the world was submerged in water and all people died except two children who survived on a hill, the salap gave them its juice and saved them from starvation. The Ankiya Konds of Ganjam district believe that they are descendants of a Kond boy and his wife, the various parts of their body were made of bel, fruit, saral wood, karela (bitter gourd), mushrooms, oranges etc. Consequently, these trees are considered sacred and given protection. Similar myths are found among the Saora, Bhuiyan tribes. The Saora tribes have also forbidden the cutting of mango, mahua, tamarind and other fruit-bearing...
trees. In Orissa various species considered sacred and as such protected, viz., banayan, peepal, mango, mahua, goose beery, bel, neem, sahada and harida.\(^{35}\)

Further, the tribals believe that the banyan tree is the abode of gods which ensures good health; the peepal tree is the abode of goddesses; the mango tree protects the village community and ensures health and prosperity and the goddess dwells in the mahua tree. The bel tree is the abode of Shiva and the worship place of Brahma; the sal tree is the abode of the forest goddess; neem provides good health etc. Thus, forest provides the life to the tribal people.

(ii) Restriction on Use:

The restriction of using the forest has been adopted to prevent the over exploitation of forest resources. These restrictions are existing not merely among Orissa, it has been practised all over India. This practice has been classified under three categories.

(a) Restrictions confining exploitation to certain seasons:

The tribals are restricted to use those trees, which has been linked to the totem and ancestral worship. The Anpir Konds of Ganjam has been restricted to destroy the Bel tree.

(b) Restrictions on cutting of ‘sacred’ species:

The banyan and peepal trees are protected throughout India. The tribals take measures to protect these species by declaring them sacred. In Orissa, the tribals accord such a status to sal, mahua and in some cases (in western Orissa) even to the mango tree.

\(^{35}\) John Deeney and Walter Fernandes, op cit., pp. 71-73.
(c) Restrictions on the quantity exploited:

In several parts of the country every family is allotted a fixed quota of timber and fuel, e.g., one headload of fuelwood per week. The tribals of Dhenkanal district are traditionally allowed one headload of firewood per member of family per week while in Kalahandi a family is permitted one cartload of firewood per month. Also, the tribals of Orissa neverluck mahua flowers but only pick those that have fallen on the ground.36

(iii) Dissuasive Customs:

In tribal society they dissuade people from cutting trees by speaking of the anger of the gods and goddesses. Thus, if the jungle debata (the forest deity) is angered, podu crop will be affected and Minor Forest Produce (MFP) would not be available. Further, destruction of forests requires prior sanction of the gods and atonement has to be made when they are forced to destroy trees. In Ganjam district the bogodo puja is performed before shifting cultivation (locally known as bogodo) begins, in order to escape the wrath of the gods and to atone for the sin of burning the forest for the needs of the people.

Further, the protection of forests from fire in most parts of Orissa and a myth of punishment has been attached to it, like in Dhenkanal district; the tribals have been taking measures to protect forest from fire. They maintained that, whenever there is fire in forest, religious customs require all the inhabitants of the affected and surrounding villages to take an active part in putting it out. Moreover, every village had to appoint a person everyday to guard the neighbouring hill from catching fire. This custom of protecting the neighbouring hill forest on which the villagers depend for their livelihood

36 Walter Fernandes et al., op cit., pp. 160-162.
was given religious legitimation by declaring it the abode of the village deity. Therefore, they have been protecting the sacred place in the forest area.

The entire system of forest protection has been closely associated with the custom, tradition and believes system of the tribals. The traditional institution of tribals controls and commands this traditional management system.

**Role of Modern Panchayati Raj Institutions:**

The fundamental philosophy of the Constitution of India is grounded on the notions of egalitarianism, social justice and empowerment. In political spheres the state adopted 'universal adult franchise' allowing common people to participate in the political process that forms the government at various levels. The institution of Panchayati Raj was created with a view to extending the decision making process to the grassroots level. The 73rd Amendment also testifies to the efforts.

The constitution (73rd Amendment) Act, 1992, came into existence to promote people's participation, to strengthen the democratic process at the grassroots level of the Indian polity. The constitutional mandate of the 73rd Act vested Panchayati Raj Institutions (PRIs) with subjects such as social forestry and minor forest produce, which was earlier, initiated in Joint Forest Management (JFM) programme. The management of forest resources by the Panchayati Raj Institution (PRIs) is another significant step to empower the local self-government at the grass root level. In the administrative perspective, however no effective coordination was found between PRIs and Forestry.

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37 Ibid., pp. 167-168.

Institution over controlling forest resources. This problem was further complicated due to the overlapping of functions on management of forest resources in the same legal jurisdiction.

The linkage of PRIs and JFMCs is further complicated in the Fifth Scheduled Areas under the Constitution. The Fifth Scheduled areas are those, which are primarily dominated by tribal people except the states of Assam, Meghalaya, Tripura and Mizoram. The Governor is empowered to administer the Fifth Schedule Areas under the provision of the Indian Constitution. Under this provision he can make, repeal or amend any act of parliament or of the state legislature or any existing law, if he thinks them to be detrimental to the interests of the tribals.

However, in reality tribal areas have been neglected in administrative perspective. Most of the cases, it was found that when the state governments started enacting Panchayat laws, they continued with the past practices of not taking into account the needs and interest of Scheduled Areas. The state governments enacted laws for all the areas and did not exclude the Scheduled Areas from their purview. Later on, this was challenged in the High Courts of Andhra Pradesh, Bihar, Orissa and Maharashtra. The courts held that the extension of State Panchayat Acts to the Scheduled Areas as ultra-vires of the Constitution and viewed that Part IX can be extended to Scheduled Areas only through an Act of Parliament. This has created an unprecedented situation in the Scheduled Areas of the country, as the formal institutions created under the new provisions of the Constitution were declared illegal and the traditional institutions of the

tribal areas were unrecognized by law. In this juncture, political parties, tribal members of the Parliament and people's organisations took up the issue and made demand for the larger interest of Scheduled Area.

Further, a need was felt by the Government of India to extend the provisions of Part IX of the constitution to the Scheduled Areas. As a result, a committee was constituted under the Chairmanship of Dileep Singh Bhuria in June 1994 to preserve and protect the traditional rights over forest resources and cultural identities of the tribal people in the same democratic structure. The committee submitted its reports with the recommendations of village governance, participatory democracy, community control over resources and suitable administrative framework for the Scheduled Area. The committee felt that while shaping the new Panchayati Raj structure in tribal areas, it is desirable to blend the tradition with modern by treating traditional institutions as the foundations on which a modern superstructure should be built. It also recommended that the Gram Sabha should be given complete command and control over natural resources, i.e., land, water and forest. The approval of the gram Sabha should be necessary for land acquisition for any purpose other than defense, railway lines, road schools and hospitals.  

Introduction of the PESA Act, 1996:

The recommendation of Bhuria Committee was accepted by the Government of India and a bill was introduced in Parliament in December, 1996. Subsequently, the bill was passed by Parliament and with the President's assents on 24th December 1996, it became an Act.

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namely, the provisions of the Panchayats (Extension to the Scheduled Areas) Act, (PESA) 1996. Further, it has been made clear in Article 243 (M) (4) (b)\textsuperscript{42} that extending the provisions of Part IX of the Constitution shall not be deemed as an amendment to the Constitution under Article 386.

Objectives:

The main objectives of this Act are i) to extend the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas with certain modification; ii) to provide self-rule for the bulk of the tribal population; iii) to have village governance with participatory democracy and to make the Gram Sabha a nucleus of all activities; iv) to evolve a suitable administrative framework consistent with traditional practices; v) to safeguard and to preserve the traditions and customs of tribal communities; vi) to empower Panchayats at the appropriate levels with specific powers conducive to tribal requirements; vii) to prevent Panchayats at the higher level from assuming the powers and authority of Panchayats at the lower level of the Gram Sabha.

The Act is applicable to the Scheduled Areas as referred to in clause (1) of Article 244 of the Constitution. It is not applicable to the areas covered by the Sixth Scheduled under the provision of Article 244 (2).\textsuperscript{43} As a sequel, all existing laws relating to Panchayats in the Fifth Schedule Areas had to be amended as per the provisions of the act within one year, that is, by 24 December 1997.

\textsuperscript{42}Parliament may, by law, extend the provision of this Part to the Scheduled Areas and the Tribal Areas 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, P. M. Bakshi, The Constitution of India, New Delhi: Universal Law Publishing Co. Pvt. Ltd., p. 186.

\textsuperscript{43}The provisions of the Sixth Schedule shall apply to the Tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram, Ibid., p. 194.
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Under the Extension Act of 1996, the Gram Sabha has been made the nucleus of all activities and endowed with specific and wide-ranging powers and functions, which do not figure in the main provisions of Part IX.44

Following the provision of the 1996 Act, the states extended Panchayats to the Tribal Areas are, viz., Andhra Pradesh, Bihar, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan. Under this provision, it allowed the people living in the tribal areas to have more control over their resources and provided the opportunities to preserve their distinct ways of lives.45

Brief Overview of Panchayats System in Orissa

In Orissa, Panchayati Raj was introduced in 1959 through the Orissa Panchayat Samiti and Zilla Parishad Act, 1959. But this Act was enforced from January 1961. The Gram Panchayat Act came into being in 1964. The three tiers Panchayati Raj was in force till 1967 and then the Zilla Parishad was dissolved. The Orissa Zilla Parishad Act of 1991 again introduced Zilla Parishad but Zilla Parishad could not be constituted till 1997. After the enactment of PESA, the state amended the Orissa Gram Panchayat Act, 1964, Orissa Panchayat Samiti Act, 1959 and Orissa Zilla Parishad Act of 1991 in December 1997. Rules have been framed thereafter to enable the Gram Panchayat to own, control and manage Minor Forest Produce (MFP) in March 2000 and November 2002.46

Ownership of Minor Forest Produce:

The Extension Act, 1996, has been endowing with wide-ranging powers and functions at the grass root level. The Act, 1996, provides constitutional power to the Gram Sabha for every village, to safeguard and preserve the traditional rights of the people. The Gram Sabha shall be endowed with ownership of Minor Forest Produce (MFP) and both the Gram Sabha and Panchayat at the appropriate level shall be consulted for granting licenses or mining lease of MFP. It also suggests that the need of prior recommendation of Gram Sabha and Panchayat obtained for acquisition of land in the Scheduled Areas for development projects or for resettlement of project-affected members of the Scheduled Tribes (STs). The Gram Sabha shall have power to prevent alienation of tribal lands and to take appropriate action to restore any unlawfully alienated land of STs.47

Although the Extension Act, 1996 endowed with ownership of MFP at the village level but at the State level, the Act lacking its uniformity in handing over the ownership of MFP to the Gram Sabha. The State Panchayat Acts of Andhra Pradesh, Himachal Pradesh and Madhya Pradesh has given this power to the Gram Sabha or the Gram Panchayat. The Gujarat Panchayat Act has given it to the village Panchayat. Maharashtra and Orissa Panchayat Acts have given this power to the Gram Sabha. In Rajasthan, it is given to Panchayat Raj Institutions at appropriate level or Gram Sabha as may be prescribed.48

Forest Policy, MFP and Tribals in the context of PESA:
The government of India has constituted a National Forest Commission under the Chairmanship of Justice B. N. Kripal. The terms of reference of the commission included-establish meaningful partnership and interface between forestry management and local communities including tribals. It is to be hoped that the Commission would also go into the problems of implementing PESA in Scheduled Areas with particular reference to “Ownership, Control and Management of MFP”.

However, over the years various shortcomings have been found in the PESA Act in the implementation level.

In this perspective, S. K. Singh has argued that over the centuries tribal people developed their traditions, culture and lifestyle for harmonious living in forest. The institutionalisation of forest management disturbed the tribals in their traditional rights over the forest resources. The recognition of Gram Sabha in Scheduled Areas has been endowed with the ownership rights of MFP under the PESA Act. However, the PESA is the State legislation on Panchayats in Scheduled Areas, which operates in consonance with the tribal people in regards to customary laws, social and religious practices, and traditional management practices of natural resources and customary mode of dispute resolution. Further, in the context of MFP, the Forest Department plays the pivotal role in controlling it at the local level. The larger issue lies in economic priorities of tribals, motivational approaches, and partnership building with panchayats, beneficiaries and forest administration, encouraging traditional skill oriented programmes, supporting
capacity building are some of the areas need to be prioritised. Unless these problems are overcome, the MFP and other provisions in PESA would remain ineffective.

In rural areas, women collect forest produce for maintenance of their family and the surplus product they used to sell in the market to earn for the family expenditure. However, it is observed that the tribal women are not getting the right amount as per their labour is concerned. To protect the tribal women from exploitation, some state governments have entrusted in procurement of minor forest produce. However, in practice these government agencies have been acting as monopolist middlemen. Thus, the role of Gram Sabha under the PESA is crucial in tribal areas. Since Orissa has been selected as a study area, it is worthwhile to discuss about forest policies of Orissa.

Role of Panchayati Raj Institution in Orissa:

Following the guideline of the Central Act, 1996, the Orissa Gram Panchayats Act, 1964, the Orissa Panchayat Samiti Act, 1959 and the Orissa Zilla Parishad Act, 1991 were amended in December 1997. The powers envisaged in the 1996 Act have been distributed among all three Panchayat tiers, i.e., Gram Panchayat, Panchayat Samiti and Zilla Parishad. However, the Gram Sabha (known as Gram Sasan) has not been given all the stipulated powers by the 1996 Act.

Devolution of Power:

In Orissa, Palli Sabha is the lowest democratic structure in the Panchayati Raj system, which is constituted at the ward level. This ward may consist of one village or more than

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one village. Each Palli Sabha shall consist of all persons registered by virtue of the Representations of the Peoples Act, 1950. The voters of Palli Sabha elect their ward member to the Gram Panchayat. Gram Sasan is the general body of the Gram Panchayat area. The Gram Panchayat is the executive authority of the Gram Sasan. The meeting of Gram Sasan is called Gram Sabha. In the context of PESA, Palli Sabha of Orissa is the Gram Sabha, where the State Confirmatory Act has given powers to the Gram Sabha, not Palli Sabha. At the village level, while deciding beneficiaries, the Palli Sabha has the right, which needs to be approved by the Gram Sabha, which is at the Gram Panchayat level. Thus, it shows that it is the Gram Panchayat not the Gram Sabha that does everything.

Control over MFP:

In the context of MFP, with the prescription of Central PESA Act, 1996, and the State Confirmatory Acts on Panchayati Raj of 1997, the Government of Orissa declared its MFP policy in March 2000 to empower Gram Panchayat to own, control and manage MFP in their own area. However, the revenue earning from MFP are still managed under the strict control of government.

Further, the important issue is handing over responsibility to the Gram Panchayats. As per the provision of PESA, the government has not really taken any organised step to create a facilitating environment for the Gram Panchayats to own, control and manage MFP. Most of the Panchayats are even not having the right information with them on the devolution of power and authority. No serious efforts have been done to capacitate the PRIs to exercise its control over resources. Further, the forest
department is no more showing any interest in the management and trade of MFP. Even if the ownership rights have been endowed on the GP, it cannot take action against traders procuring MFP from the area without any registration. The GP has to lodge a complaint against the trader before DFO for penal action. 51

To conclude, the importance of the role of traditional institutions has not yet become irrelevant. Traditional institutions were performing significant role in the management of forests. Before the modern institutions came into force, the forest dwellers were maintaining some kind of balance between using and preservation of local forests. The example of community forest management can be demonstrated to substantiate this position. In this context, they underline the importance of sustainable development. The modern institution empowers the elected members of the panchayat to manage and preserve the forest under the PESA Act, but they are not aware of the entrusted powers on them under this Act. Although social forestry programmes are important and are labour intensive, since they take a long time to show results, PRIs tend to spend money on works that show quick result like road construction, well sinking, building construction etc. to gain popularity. The members of these institutions after all, have a desire to be re-elected and naturally, they tend to gain popularity by implementing these schemes that show quick result. Therefore, the government should make mandatory on these institutions to spend some of their annual budget on social forestry programmes in addition to ploughing back in afforestation a portion of the revenue which these institutions would get from the older plantations.