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You are welcome to use the information in this document with due acknowledgement. This publication is also being translated in Gujarati. For copies of this publication and other publications on impacts of tourism write to us at info@equitabletourism.org.

# Public Purpose?

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**How the Tourist Destination of Tomorrow continues to dispossess the Adivasis of Narmada today. An investigative report on the tourism project in Kevadia, Narmada District, Gujarat.**

EQUATIONS, March 2008

Injustice continues to haunt the Narmada River Valley. As the Sardar Sarovar Dam inches towards 138 metres, with each passing year and each onset of monsoon, hills, mountains and plains get inundated, pristine forests, villages, people and their croplands are submerged without proper rehabilitation and compensation. This phenomenon is not limited to the impact areas of the Sardar Sarovar Project (SSP) alone. The inhuman suffering is writ large on the whole of the Narmada Valley - the Omkareswar and Mann dams, the Indira Sagar Project, and the Bargi and Maheshwar dams. In a span of a quarter of a century, millions have been ousted from their ancestral homeland, thousands of hectares of crops destroyed. After more than twenty years of heroic struggles and supreme sacrifices, in spite of the Narmada Water Dispute Tribunal awards, Supreme Court and High Court orders, over a quarter of a million people, a large number of them tribals, are yet to be rehabilitated, waiting for the water of mother Narmada to submerge them.

The Narmada Valley projects comprise 30 large dams, 135 medium size dams, and 3000 small dams, along with minimum of 75,000 kms of canal networks to direct the waters of the Narmada River to wherever the state decrees. The project plan appeared in 1979 after 10 years of deliberations of the Narmada Water Disputes Tribunal. Sardar Sarovar is the last dam before the river empties into the Arabian Sea. This, along with Indira Sagar, are the two gigantic projects in the valley.

While more than 250,000 oustees still await rehabilitation, a fresh set of displacement is being triggered off, this time in Kevadia, Gujarat, the Sardar Sarovar Dam site, for a huge tourism project centered around the “Pride of Gujarat”. For the people of Kevadia however their story is doubly tragic - after fighting the dam and displacement, without rehabilitation, for so many decades there is a new foe to fight-tourism.

### From dams to tourism: why Kevadia?

Kevadia and the other five hamlets, around 90 km out of Vadodara, were rudely shaken out of their slumber on one winter morning way back in 1961. A bulldozer arrived in the village Kothi and flattened the standing crops. Villagers were told that they need some land to construct a helipad (something very alien to the villagers). Papers were signed and some payments were made supposedly for the damaged crops. And then, on 15th January 1961, a ‘big bird’ arrived with Pandit Jawaharlal Nehru, the first Prime Minister of India. He made a speech and triggered off an explosion on the other side of the river. He went back but very few, knew that the Sardar Sarovar Project was inaugurated.

With the inauguration over, the Government of Gujarat acquired 1,777 acres of land from 397 families (refer table 1 and 2) of the six villages of Kevadia, Waghodia, Kothi, Limri, Navagam and Gora in 1961. The villagers were Tadvi tribals. They were sent notices of land acquisition for public purpose - the construction of the Sardar Sarovar Dam - and told that they would be paid cash compensation and given jobs on the dam site. Their lands and houses were acquired for the project colony as early as 1961-63 giving them a measly Rs. 80 to 250 per acre, but they were never recognized at par with the project affected people of the reservoir.

**Table 1: Acquisition of land - 1961**

Village	Total Land	Land acquired	Vacant Land
Kevadia-Kothi	957	755	201
Waghodia	280	280	0
Gora	914	259	655
Navagam	290	218	72
Limri	350	265	84
<b>Total</b>	<b>2791</b>	<b>1777</b>	<b>1012</b>

Source: RTI application filed by NBA. Reply received as on 6 Jan 2008

**Table 2: Families affected due to land acquisition - 1961**

Village	Total no of land loading families	Partial acquisition of land - 25% and more of their total landholdings	Vacant Land
Kevadia-Kothi	122	72	50
Waghodia	50	0	50
Gora	113	98	15
Navagam	49	39	10
Limri	63	40	23
<b>Total</b>	<b>397</b>	<b>249</b>	<b>148</b>

Source: RTI application filed by NBA. Reply received as on 6 Jan 2008

The World Bank’s 1985 Project Appraisal Report on Sardar Sarovar, prepared before granting of the loan, stated that the people of the six villages fall in the category of oustees since they are “displaced from their ‘usual habitat’ due to the carrying out of the Project” and that they should be provided with a special Rehabilitation Package. But, the Government of Gujarat did not relent.

However, in 1992, due to the pressure mounted by the Morse Committee (Independent Review Commission appointed by the World Bank) and the World Bank, the Government of Gujarat was compelled to dole out some compensation. The amount offered was Rs.12,000 per acre subject to a maximum of Rs.36,000, irrespective of whether the land acquired was 3 or 10 acres! This offer still stands while the market value has gone up more than five times in the last 15 years. Not more than 10-20% families in the six villages, especially the aged, have accepted this money, till date.

A large portion of the land of six villages was transformed into the Kevadia Project Colony of the Sardar Sarovar Narmada Nigam Limited<sup>1</sup> (SSNNL). Most of the families in the six villages refused to accept the meagre “compensation” being handed out to them. They asserted their right to be recognized as project-affected persons and to get the same benefits as any other family losing land to the reservoir and residing in the submergence zone. In the early years, FIRs were filed against the families who refused to vacate their land. Not all the lands acquired were marked for public purpose or project related construction and also many were left out of the list of project affected. The land acquisition notices

<sup>1</sup>A special vehicle created by the Government of Gujarat to implement the Sardar Sarovar (Narmada) Dam Project.

sent to Chima Lallu and Rama Dadla by the Public Works Department (PWD), Narmada district, mentioned 'construction of a petrol pump' as the purpose for acquisition. In another case, Prabhubhai of Waghodia, who got a job as daily worker in then Narmada Control Authority in 1981 (the first authority to be handed over the charge of Narmada Dam Construction and related Administrative activities) on a daily wage basis, was declared as not entitled to any compensation. 209 such villagers are presently employed with SSNNL (refer table 3), most of them as daily wage earners with very few as permanent. Most of the employed have been given employment on their merits and not on the basis of being project affected.

**Table 3: Villagers employed with SSNNL**

Village	Employed with SSNNL
Kevadia-Kothi	79
Waghodia	26
Gora	35
Navagam	36
Limri	33
<b>Total</b>	<b>209</b>

Source: RTI application filed by filed by NBA. Reply received as on 6 Jan 2008.

Writer-activist Arundhati Roy observed in her 1999 essay *The Greater Common Good*<sup>2</sup> that significant portion of the land acquired remains unused but the government refuses to return it. "Kevadia Colony is the key to the world. Go there, and secrets will be revealed to you." She says. "Eleven acres acquired from Deviben, who is a widow now, have been given over to the Swami Narayan Trust (a big religious sect). On a small portion of it, the Trust runs a little school. The rest it cultivates, while Deviben watches through the barbed wire fence. On the 200 acres acquired in the village of Gora, villagers were evicted and blocks of flats were built. They lay empty for years. Eventually the Government hired it for a nominal fee to Jai Prakash Associates, the dam contractors, who, the villagers say, sub-let it privately for 32,000 rupees a month. (Jai Prakash Associates, the biggest dam contractors in the country, the real nation-builders, own the Siddharth Continental and the Vasant Continental in Delhi.)"

<sup>2</sup>Refer "The Greater Common Good" by Arundhati Roy, Frontline, April 1999

## The struggle continues and so does the Kevadia story

### Enter the Kevadia Tourism Project

Over the years, of the 1777 acres of land acquired for the project colony and related works, 1400 acres (Indian Express Ahmedabad, New Line - August 26, 04) remained unused. This huge amount of unused land acquired for public purpose is perhaps the genesis of the tourism project in Kevadia. Today, the SSNNL, is the proud owner of 1400 acres of adivasi land proposing a tourism (or eco-tourism as their website calls it!) project in an attempt to 'present the dam site in its pristine and natural glory, with nature parks, planned gardens, woodlots, nature trails, an eco-museum and a panoramic view of the hills which will captivate the tourist and hold him in awe of the benefits provided by the project'<sup>3</sup>. In fact, it is reported that plans for tourism development were initiated as early as in mid-90's on the basis of a commissioned consultancy project. At that point the plans were to develop tourism not only at the Kevadia Colony but also at 4 other points along the canal. This was supposedly in an effort to raise finances for the project. The Narmada Bacho Andolan had submitted the relevant documents to the Supreme Court and the Government of Gujarat had denied this in court.

These efforts seemed to have been revived subsequently in a series of efforts. The website of SSNNL at [www.gujarattourism.com](http://www.gujarattourism.com/destination/sardar_sarovar/index.html) makes amusing reading. "Eco-tourism is conceptually purposeful travel to natural areas with an emphasis on understanding the culture and natural history of the environment, taking care not to alter the integrity of the ecosystem, while providing economic opportunities that make the conservation of natural resources beneficial to the inhabitants of the host region. This concept of eco-tourism is being developed at Kevadia on a scientifically-based approach for the planning, management and development of sustainable tourism products and activities. On similar lines the Gujarat Tourism Policy 2003-2010, "proposes to create what is called Vishwa Gram (Global Village) by erecting structures and models of different countries on the banks of rivers and along the long network of Narmada Canal at various places". It says "NRIs and other visitors coming from various countries can stay at these places and feel at home. It is ironic that "feel at home" tourism comfort and pleasure is being proposed to be provided to wealthy and elite tourists at the cost of people's homeland which has been their abode for generations.

According to SSNNL, the land downstream of the dam consists of light deciduous forest inter-spread with lakes, grasslands, streams,

<sup>3</sup>Refer to [http://www.gujarattourism.com/destination/sardar\\_sarovar/index.html](http://www.gujarattourism.com/destination/sardar_sarovar/index.html)

hillocks and rivulets. The topography is undulating, with an amazing variety of plant species and wild life, making it an excellent location for recreational and leisure activities. The SSNNL website further states that it is also interested in development of eco friendly tourist facilities with private sector participation, with a view to create an attractive tourist destination and also to create awareness about the project. The various components as per the development plan are hotels and cottages, up-gradation of existing structures for accommodation, camping sites development, providing recreational areas comprising of Water Park, Leisure Park, Botanical Garden, Ecological Park etc, lake development, Ecological trails, Golf Course, Visitors Center, Yoga Center and Convention Center<sup>4</sup>.

Media reports since 2003 indicate that both the Gujarat Government and the SSNNL were trying to sell this idea to the private players interested in tourism development. An official presentation at one global investors' meet in September 2004 described 'Canal tourism' as the future. Another presentation by SSNNL proposed to develop the dam site colony as an "eco-tourism site" at a cost of Rs 170 crore.

Gujarat government mooted a proposal, involving Madhya Pradesh and Maharashtra, to develop tourism activities in and around the Narmada dam. The Times of India reported (11 October 2003) that a proposal for an inter-state tourism project was floated and sent to the two neighboring states. 'While Madhya Pradesh has conveyed to that it has no objection, Maharashtra has said that the project could go ahead provided the costs and income are shared'. SSNNL felt that the 150-kilometre stretch of reservoir, which is on an average one kilometre wide and 10 to 100 metres deep, can be an excellent area for water sports, running cruises and small boat rides, trekking in the surrounding hills in the Narmada valley and eco-tourism activities in the forest belt. The news report also mentioned that there is an added advantage – the project can involve 'free availability of liquor in the two states across the Gujarat border to draw the travel-crazy Gujaratis to spend their holidays freely in the wide expanse of water and woods'. The proposal had a passing mention at the 'Vibrant Gujarat' global investors' summit held in Ahmedabad in September 2003.

### Planning for the Tourist Destination of Tomorrow

In May 2004, Ahmedabad-based Centre for Environmental Planning and Technology (CEPT), engaged by the SSNNL, had submitted a Master Plan. CEPT identified 11 packages with total estimates of Rs 170 crore. Manisha Verma, the then deputy general manager at SSNNL stated emphatically, "We decided to develop it because we

<sup>4</sup>Ibid.

did not want builders coming there and raising any type of construction. Even the construction that will take place by way of infrastructure will follow very stringent norms as per the Master Plan designed by CEPT." (The Times of India, 13 September, 2004).

A brochure titled "Kevadia: The Tourist Destination of Tomorrow" published by the SSNNL, indicates detailed packages along with estimated area covered and investment

**Table 4: Details of packages along with proposed area and investment in the Kevadia Tourism Brochure**

Sl. No.	Packages	Area covered (ha.)	Estimated Investment in million Rs
1.	Water park, hotels	35	100
2.	Golf course, hotels	80	300
3.	Water park, Golf course, hotels	110	400
4.	Botanical Garden, cottages, camping	20	40
5.	Theme park, cottages, trekking	40	50
6.	Theme park, cottages	20	40
7.	Cottages, wild life reserve, camping, trekking	70	700
8.	Boating decks	3 in number	3
9.	Viewpoint restaurant, Sunset point		3
10.	Visitors centre	1259 sq m.	10
11.	Hotels upgradation	7700 sq m.	40

SSNNL had invited prospective developers to purchase project information dossiers (PIDs) from its Gandhinagar headquarters who were then taken to the Kevadia dam site for a three-day visit. (Indian Express, August 27, 2004). This seemed to have generated interest from private investors. As per BSEL Infrastructure Realty Ltd (BSEL) Corporate Notice to Bombay Stock Exchange with respect to its projects in the pipeline "The Company has contended for the infrastructure paradise spread over 2500 acres in Kevadia Gujarat. The project will be a tourism facility and will provide everything tourism could want. Development will include activities ranging from agriculture to temple to Health Centre to Restaurant to Disco etc. apart from residential and commercial complexes. The project further includes residential schools, international boarding schools, hotels, resorts, club houses, family entertainment centers, botanical gardens, water-sports activities etc. The project will be developed in Phases.<sup>5</sup>

<sup>5</sup>Source: BSE, BSEL Infrastructure Realty Ltd. (BSEINF), By Sirshendu Basu, visited on 07.02.08.

An UK-based NRI has also shown interest in starting what is being called “Lake District train”, around the green environs of Kevadia Colony. (Times of India, 13 January 2005). Rajen Patel, from Kingsbury in London, has proposed “to develop light rail facilities around Kevadia by laying down a 22-km rail line.” The project is proposed to be put on rails with the help of two Indian promoters Shreenath Travels and Shivam Travels. “I have already signed a memorandum of understanding (MoU) with the Gujarat government to develop world class tourism facilities at the site. This includes hotels, food marts and transportation. The train will be the first step,” says Patel. Patel wants the land for 50 years, though the current law only allows lease for 35 years, and entertainment and sales tax exemption. He expects the entire project to be completed in a decade.

However, there seems to be change of plans. Talking to Business Standard (January 31, 2007), early this year, Mr. R V Gajjar, the Executive Engineer, Tourism, SSNNL said that, “The Master Plan for the project has been developed by the chief town planner of Baroda Urban Development Authority (BUDA) and the chief town planner of Gandhinagar. BUDA and its executive engineers have submitted the final draft to the nodal agency and are likely to get the approval soon.” The senior officials of the newly formed tourism cell of SSNNL are tightlipped about the change of plans and the Master Plan itself. Nor are they willing to share any information about the bidding process and the names of possible private developers. The most recent updates were not possible as information about such matters is not in the public domain.

PVK Rameshwar of the Urban Development Department of the Records and Development Unit of CEPT, the Project Coordinator for the Kevadia Tourism Master Plan, is unwilling to share their report which he said was submitted to their client SSNNL, and divulging the same ‘would be a breach of contract’. According to Mr. Rameshwar, the design brief supplied by SSNNL was simply to beautify the project area like the Brindavan Gardens. The Plan was drawn up based on many parameters such as soil type, availability of land, hydrology, management and financial strategies etc. A land suitability diagram was used to indicate what is buildable and not buildable. The model proposed was public-private partnership since SSNNL owns all the land required for the tourism project. The CEPT Master Plan proposed non-conflicting lands to start with and a status quo in terms of the six villages. The Plan also indicated a re-interpretation of the term industry in terms of development of floriculture and forest produce in the project area and advocated in favour of wildlife sanctuaries, forest reserves, tents, camping grounds to be included in the Plan. “No nature means no tourism and therefore no money”, was what Mr. Rameshwar concluded. CEPT was also against a large-scale development and a single developer. The Master Plan also

proposed a monitoring committee. What is important to note is the Master Plan included the local villagers in its scheme of things to come. At the same time, CEPT also advocated the constitution of a Special Notified Zone/Development Authority to implement the project.

The CEPT team had a couple of meetings after they submitted the draft Plan. Mr. Rameshwar had communicated to SSNNL authorities to keep them in loop so that the team could play a role once the Master Plan was accepted and cleared for implementation. Two years down the line SSNNL has not communicated with CEPT on this issue.

When his views were sought, Mr. P K Laheri, the Chairman of SSNNL, came out with a new twist to the Kevadia tale. He said that CEPT was merely told to draw up a Draft Plan and it was left to SSNNL to accept their suggestions and proposals. “We have gone ahead keeping the CEPT draft in mind and other suggestions and comments that came in. The Master Plan is now being finalized by the Vadodara and Gandhinagar town planners”, he stated.

According to Mr. Laheri, the project was aimed at an integrated development of Kevadia and its surrounding areas and is developed as a people’s project. A project that will be viable, safe, comfortable, educative. “After visiting the project area, the tourists would go back with lots of information and pleasant memories”. The economic viability of the project rests on the Sardar Sarovar Project Dam site in Kevadia being visited by at least 2 million tourists every year.

Several questions arise. What happened to the CEPT Plan? Why was it dumped? Why was the tender process which was opened through a Request for Proposal (RFP) on November 29, 2006 been repeatedly postponed?

**How could the SSNNL award bids/contracts to private developers on lands that were acquired for public purpose? Or did the SSNNL find a way to circumvent this possible legal tangle?**

### **The Story Unfolds further: Kevadia Area Development Authority**

The Urban Development and Urban Housing Department, Government of Gujarat, vide a notification No.GH/V/112 of 2005/UDA-112004-8027-V and dated 29-1-2005 constituted the Kevadia Area Development Authority (KADA) which very few people are aware of. While KADA, by this notification became the sole administrator and arbitrator of the lands owned by SSNNL, another notification dated 27 December 2006 appointing the members of

KADA ensured that control was retained by SSNNL. The Notification No. GH/V/324 of 2006/UDA-112004-8027-V appointed nine members of the Authority to be chaired by the Chairperson of the SSNNL. The other members are the Chief Town Planner, Managing Director, Gujarat State Tourism Corporation, Commissioner, Sardar Sarovar Rehabilitation Agency, President, Narmada District Panchayat, Sarpanch, Limadi and Gora Gram Panchayats, Anup Dave, Ahmedabad and Administrator, Kevadia Colony. It seems as if SSNNL has managed to pass on the buck of any conflicts arising out of land acquisition to KADA, while retaining complete control over the area through the authority of its Chairman.

With KADA declared in January 2005 the threats of eviction from their land and homestead in the villages of Kevadia, Waghoria, Limadi, Kothie and Navagam were renewed. The villagers were told to take the paltry compensation and leave or they would be evicted and driven out. On May 5th 2005, in Kevadia, two houses belonging to Natwarbhai Bhajji Tadv and Chandubhai Maganbhai Tadv were demolished with bulldozers in broad daylight. The houses, also used as small shops, serving all the officials and labourers of Sardar Sarovar, were on the land that once belonged to Natwarbhai. Both of them - original inhabitants of Kevadia - were served with notices in 1961 when their lands along with standing crops were acquired.

According to PK Lahiri, Chairman and Managing Director of SSNNL, "There are 11 villages on the right side of Narmada River and five on the left which would be covered under KADA."<sup>6</sup> According to him the setting up of KADA envisages providing infrastructure facilities and employment opportunities in the 16 villages affected by the Sardar Sarovar Narmada Nigam Limited (SSNNL) project in the district, and also to develop it as a tourist spot. According to SSNNL authorities, the KADA office is expected to be set up by April-2008. The state urban development authority has allocated around Rs 25 lakhs to SSNNL to conduct a survey in the villages.<sup>7</sup> Pointing out that this area has a lot of potential for tourism, Lahiri said, "It is also adjoining Rajpipla which is becoming a famous destination for shooting of regional films."

Though Mr. Laheri did admit that the bidding process had been temporarily postponed, he was quick to point out that everything would be in shape by the end of 2007. The Chairman, however, refused to give out names of possible private developers that the SSNNL had zeroed in on. But back in Kevadia people talked about the Mumbai based realtor BSEL, which is already constructing a luxury hotel called Narmada Nihar right on the main road connecting Kevadia to Vadodara.

<sup>6</sup>Refer Kevadiya's tribal areas to get urban colours, The Indian Express, January 12, 2008

<sup>7</sup>Ibid

### Narmada Nihar

Total Land Area - 6,03,000 sq. ft  
 Two phased Development perspective - Commercial & Accommodation  
 Commercial Development includes- Shopping, Entertainment and Restaurant  
 Total Cost of the Project = Rs. 25 Crores  
 Revenue from the Project= Rs. 50 Crores  
 Commencement = June 2006 & Completion = June 2007

The company has planned to set up residence service apartments, prime budget hotel facility, retail and food court with recreational facilities. The facility will also include landscaping, community dining hall, indoor games, outdoor sports, swimming pool, gymnasium, children's play area, craft bazaar, ethnic shops, car parks, dish antenna and so on.<sup>8</sup>

**BSEL: A company Overview** (BSEL Infrastructure Realty Ltd. (BSEINF), Tuesday, February 12, 2008, 17:12 IST By Sirshendu Basu <http://content.icidirect.com/PickofWeek.asp?id=246>)

BSEL Infrastructure Realty Ltd (BSEL) was incorporated as "Bell South Enterprises Ltd" in 1995 and was converted into a public limited company the subsequent year. The name of the company changed to BSEL Information Systems Ltd in 1998 providing varied IT services. Around August 2003 the company was renamed as "BSEL Infrastructure Realty Limited with an object of focusing on infrastructure development activities. Considering the emergence of open market, liberalized policies of Indian Government, significant growth in infrastructure development and subsequent interest of investors to participate and contribute and benefit from new developments, BSEL Infrastructure Realty has taken up the infrastructure development, as its business activity.

Major Projects:  
**BSEL Tech Park, Vashi, Navi Mumbai, Maharashtra**  
**International InfoTech Park, Vashi, Navi Mumbai, Maharashtra**  
**Kevadia Project, Gujarat \***  
**Palm Beach Paradise - Nerul Golf Course, Navi Mumbai, Maharashtra**

<sup>8</sup>Ibid

\* Recognizing the immense potential of the Dam site and its environment in terms of tourist potential of 1,400 hectares of land downstream, the Sardar Sarovar Narmada Nigam Limited (SSNNL) and Government of Gujarat has floated the tender for Expression of Interest (Eoi) to development of World-Class Tourism Facility at "Kevadia" in August- 2004.

BSEL has shown expression of interest in the development of above mentioned - World-Class Tourism Facility at Kevadia. After the product information dossier and positive reciprocal by SSNNL, the tender process shall begin in a while. The company is aggressively looking forward to participate in this project floated by SSNNL and Government of Gujarat at Kevadia, Gujarat. The project further includes residential schools, international boarding schools, hotels, resorts, club houses, family entertainment centers, botanical gardens, water-sports activities etc. With attractive projects in the pipeline, 2005-06 provides a significant opportunity for the company to develop strong brands in the infrastructure industry.

On June 18, 2006 six hectares of land within the Kevadia village was handed over to the Mumbai based BSEL Infrastructure Realty Ltd (BSEL) for constructing Narmada Nihar, a luxury hotel. The land was given out for Rs.1.30 crores for a 30 years lease. The officials of the Kevadia Colony administration accompanied by a huge police force then descended on the land of half-a-dozen tribal families on July 10, 2006 to forcibly evict them to pave way for the construction of the hotel to begin. Villagers resisted and were joined by others from nearby villages. The officials could not go-ahead fearing a law and order situation but told the families to vacate the land on their own in due time since their lands were already acquired long back.

Part of the required land was taken over in phases starting with that which was vested to the government. This part of the land included one Industrial Training Institute (ITI), one middle level government school with hostel facilities, quarters of government employees and some cultivable land. The ITI, school and the staff quarters were demolished and the construction was started. In the process, the homestead land and the house of Shantilalbai got surrounded by the site. He still lives there and BSEL has promised to build a house for him! But villagers are yet to vacate the rest of the land required for the site. Protests are going on and continue till date. The villagers are on hunger strike which continues as this report is released. However, the authorities have paid no heed to this protest.

## Dismissal of Constitutional Rights: Status and Rights of Local Self Government

Before the Kevadia Development Authority was established in December 2006, the Kevadia Colony came under the ambit of the Gujarat Panchayati Raj Act 1993.

As per information in the public domain, on October 2, 1997 Narmada District was split from Bharuch along with some other districts<sup>9</sup>. Nandod Taluka which was in erstwhile Bharuch District became part of the Narmada District. Kevadia Colony is in Nandod Taluk of Narmada District. Nandod is a declared Schedule V area<sup>10</sup>. Therefore Kevadia Colony is also a Schedule V area where the provisions of the Panchayats (Extension to the Scheduled Areas), Act, 1996 (PESA) are operational.

Article 244 of the Constitution of India through the Vth Schedule of the Indian Constitution provides protection to the adivasi people living in the Scheduled Areas and gives them the right to self rule. Constitution of India through the Vth Schedule and PESA re-enforces the rights of the adivasis to territorial integrity and the right to decide on their own path of development (Schedule V of the Indian Constitution). It disallows the transfer of tribal lands to non-tribals and corporates. The Constitution of India, through its 73rd Amendment, paved the way for a separate and progressive legal and administrative regime for tribal areas for a genuine tribal self-rule. This was done by enactment of the Panchayat (Extension to Scheduled Areas) Act, 1996<sup>11</sup>

PESA is a comprehensive and powerful law that empowers gram sabha of the Scheduled Areas to address the issues that emerge in their daily lives. PESA has attempted to decentralize the control and management of natural resources and several functions of social relevance including adjudication of disputes in accordance with prevalent traditions and customs. It needs to be said that perhaps no law in independent India has talked so eloquently about 'customary law' 'community resources', village as a community, village people safeguarding their 'traditions and customs', and so on.<sup>12</sup>

<sup>9</sup>Like Anand District was split from Kheda, Dahod District was split from Panchmahal, Navsari District was split from Valsad, and Porbandar District was split from Junagadh. Refer <http://answers.yahoo.com/question/?qid=20061009005243AAAnAPHo>

<sup>10</sup>Refer to Scheduled areas in Gujarat, <http://www.tribal.nic.in/gujratscareas.html>

<sup>11</sup>See the full act at <http://ncscst.nic.in/panchayats.htm>.

<sup>12</sup>Implementation of PESA, from PRIA, New Delhi, Compiled by Alok Srivastava, Resource Person; additional research by Happy Pant, Research Officer, 23 December, 2005

Under PESA, the gram sabha is empowered to approve plans, programmes for social and economic development, identify beneficiaries under poverty alleviation programmes, certify utilization of funds by gram panchayats, protect common property resources, including minor forest produce and be consulted prior to land acquisition. Some states have given powers to gram sabhas, through standing committees, thereby providing a model for emulation in the PESA areas too

According to a clipping by Press Information Bureau, Government of India in the year 2000, the provisions of the Panchayats (Extension to the Scheduled Areas), Act, 1996 (PESA) has come into force on December 24, 1996. This Act extends Panchayats to the tribal areas of eight States of India, namely, Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa and Rajasthan with the intention to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. The States Governments were required to enact their legislation in accordance with the Provisions of the Act before the expiry of one year i.e. December 23, 1997. States barring Bihar have enacted State legislation to give effect to the provisions contained in the Act.<sup>13</sup>

The Provisions of PESA were operationalized in Gujarat in 1998 when Gujarat Panchayats (Amendment) Act, 1998 was enacted. The Act extended the provisions of Gujarat Panchayats Act, 1993 to Scheduled Areas of the State with certain modifications. In the State of Gujarat, it is applicable in 5,055 villages, in 33 talukas, in 7 districts.<sup>14</sup>

The PESA in Gujarat has empowered the Gram Sabha exclusively to execute certain functions, those are:

- Approving any plan, project or programme for the development of the village;
- Selecting beneficiaries to be benefited under the poverty alleviation and other programmes;
- Issuing a certificate for the money spent by the Panchayats;

As regards consultative powers regarding land acquisition for developmental projects, the same has been given to Taluka Panchayat. Taluka Panchayat has to be compulsorily consulted before:

- i. The acquisition of any land situated in the taluka for a development project

<sup>13</sup>Panchayati Raj Institutions (Facts 19-Jun-2000), <http://pib.myiris.com/features/farticle.php3?fl=000619161635>

<sup>14</sup>Refer to Annexure II

- ii. The rehabilitation of people evicted by such project

This apart, the precedent of the historic Samatha judgment will also be applicable<sup>15</sup>. The Special Leave Petition (SLP) filed in the Supreme Court led to a historic judgment in July 1997 which declared that government is also a 'person' and that all lands leased to private mining companies in the Scheduled Areas are null and void. This move has serious economic and cultural implications to the 80 million tribals of the country. SSNNL is also a "person" in the legal standing and as per the judgment cannot transfer Schedule V lands of Kevadia Colony to private agencies for infrastructure development necessary to expand tourism. According to analysts who have been tracking the implementation of PESA in different states, in the state of Gujarat, the way PESA has been implemented totally violates the spirit of Central PESA by giving these powers to different tiers of Panchayat Raj Institutions, totally excluding the Gram Sabha from exercising such powers. The Central Legislation sought to empower the gram sabha by giving it a pivotal role in the management of natural resources, social and economic development, and protecting tribals from exploitative money lending and market practices. Restricting the gram sabha from exercising these powers is a violation of the constitutional mandate.

### **Overriding Authority: Transfer of power from Local Self Governing institutions (LSGIs) under PESA to Kevadia Area Development Authority (KADA)**

Our key points of concern are the following:

- KADA usurps powers and mandate of Local Self Governing Institutions that have been bestowed on them by the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments of the Constitution of India<sup>16</sup> and extension of PESA in the region. The mandate of KADA as the previous sections of this fact finding report indicates, clearly bypass the Constitutional mandate and provisions of Gujarat Panchayats (Amendment) Act, 1998 that extended the provisions of Gujarat Panchayats Act, 1993 to Scheduled Areas

<sup>15</sup>Samata, an NGO working in the scheduled area of Andhra Pradesh, filed a case against the Government of Andhra Pradesh for leasing tribal lands to private mining companies in the scheduled areas.

<sup>16</sup>Refer to the Table I and II attached as Annexure. **Table I: The rights and responsibilities of the Panchayats/ Municipalities as per the 73<sup>rd</sup> and 74<sup>th</sup> Amendment of the Constitution with respect to Tourism related issues and vis-à-vis expectations of the tourism industry.**

**Table II: The rights and responsibilities of the Local Self Governing Institutions in Gujarat as per the Gujarat Panchayat Raj Act, 1993 with respect to issues that has links to tourism.**

of the State with certain modifications. It makes them redundant in declared KADA areas. The focus of KADA is primarily marketing, promotion, investment, growth, and infrastructure built-up for the tourism sector.

- It propagates the model of converting homeland of people into tourist locations.
- KADA substitutes the general Planning Process (the General Development Plan drawn by the LSGIs of these areas formulated under the Gujarat Panchayati Raj (Amendment) Act, 1998 to favour tourism related development process that prioritizes and privileges tourism centric developments through Special Master Plans.

The process derails the constitutionally mandated system of decentralised governance through the elected representatives of local self governing institutions. It usurps power of panchayats in these geographical areas, which the Gujarat government feels are profitable areas for expansion of tourism. It is a curious blend of a process that promotes centralising power of decision making on issues such a control of natural resources like water and land (on which the tourism industry is highly dependent). It is coupled with the process of substituting and prioritising tourism development plans over the general development plans in the area that is identified to be having tourism potential through Tourism Master Plans, thereby allowing the Development Authorities like KADA to override decisions and functions of other departments whose core mandates are related to overall development of the area. Time and again civil society has raised the issue about how can any projects be planned and permitted without being approved at the village level - grama sabha. These projects, which do not involve approval of the grama sabha are unconstitutional, specially so where the area concerned is a Scheduled Area under Article 244 and Schedule V of the Constitution of India. Therefore, any changes in governance policy calls for an intense public consultation and debate with the local people and their representatives.

*The question arises can/should the State Planning Commission who is charged with the responsibility of making assessment of all resources of the state, augmenting deficient resources, formulating plans for the most effective and balanced utilisation of resources allow such planning for any region that is against the very basic mandate of decentralisation bestowed to the people of this country by the Constitution of India? Can the general development plan (the General Master Plan of any area formulated under the local Town and Country Planning Act) be usurped in favour of prioritising and pushing tourism centric developments - a model far from one that is sustainable or beneficial to local communities.*

- This practice of transfer of power from LSGIs to Area Development Authorities, aims to re-establish the colonial praxis that State and not the people are competent to be seized with all matters. Given the history of decentralization and devolution of powers to local self governing bodies this certainly seems a retrograde step.

It is a little known fact that tourism development projects propagated as “clean and green” and employment generating, have both direct and indirect impact on peoples’ rights, livelihood access to resources and social fabric and also results in displacement. Tourism has also played a role in the eviction of indigenous people, fishing communities and people in general from their ancestral lands only to then open them up to ‘tourism’, packaged in various names like “eco-tourism”, “beach- tourism”, “wildlife tourism” “adventure tourism” etc. While it might seem that the land requirements for tourism activities are not high, this is not true. The tourism and entertainment SEZ in Gorai-Manori is acquiring 1000 hectares, the Delhi Commonwealth Games Village STZ requires 250 acres and the Harayana government’s planned Special Tourism Zone in Gurgaon to build “Disneyland” is going to grab huge tracts of land as well although no official figure on size of this project has yet been quoted. A multi-million dollar project to build a huge statue of Buddha and develop Kasya (the site where the Buddha spent his last days) in Kushinagar as a tourist site threatens to displace 700 families from 600 acres of cultivable land<sup>17</sup>. The present decision of SSNL to launch an eco-tourism Project near Kevadia to meet the growing demand of tourism industry in the name of upgrading the environment is no different. This project will affect six villages near the dam site, causing loss of agricultural land to number of tribal families, many of whom had been displaced during the construction of the first phase of the Dam. The Sardar Sarovar project which has been a symbol of state indifference to displacement and rehabilitation issues, is once again gearing -up to displace more people to expand tourism. The question that arises is, has the project taken into account

- The impacts on access and control over common property and natural resources, impact on social and cultural aspects apart from physical displacement of families?
- Both Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA) should be conducted before the project is operationalised.
- An independent multidisciplinary expert group should be constituted for examination of the EIA and SIA report.

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<sup>17</sup>Refer “The Buddha Would Not Have Wanted This” <http://www.thesouthasian.org/> August 25, 2007

- Representative of the local community should be included in the independent multidisciplinary expert group constituted for examination of the EIA and SIA report.
- Apart from EIA report, SIA should be given due value. Acquisition and related proposed project should be stopped if SIA indicates negative impacts.

Reiterating the concern EQUATIONS had highlighted in its critique of the Draft National Rehabilitation, Resettlement Policy 2006 and the recently drafted Rehabilitation & Resettlement Bill, 2007, it is of concern that governments still does not take into account the projects where physical impact is not as visible and effects are indirect or secondary as in most tourism cases. For instance in Goa, star category hotels and resorts such as Bogomalo Beach Resort, Holiday Inn Resort, Leela Palace at Mobor beach and Taj Fort Aguda Resort at Calangute beach and several other resorts have come on the beaches. On an average each of these star category resorts have used about 20 acres of land on the beach. The Taj Fort Aguda Resort has used about 73 acre land on Calangute beach, one of the major attractions for tourists. Although physical displacement of people due to development of resorts may not be a very large numbers, it has affected people's access to the coast to pursue traditional livelihood. The small shack owners and communities dependent on fishing have been affected by such developments. As highlighted by the National Advisory Council (NAC) displacement is much more than physical displacement of people and has far reaching impacts on people's livelihood and socio-cultural aspects of their lives.

### Corporate Tourism becomes "Public Purpose"!!

Handing over the land acquired in Kevadia to BSEL, a private developer, marks a serious departure in the history of the Sardar Sarovar Project. The land in question was acquired to construct a dam by the government. But this land now stands diverted for the construction of a hotel which is by no stretch of imagination public purpose. In fact, is tourism "public purpose" at all?

The Gujarat government has, till date, diverted a part of the vacant, unused (for the Sardar Sarovar Project) land to different agencies such as Swami Narayan Trust (about 10 acres of Kevadia village land), Shulpaneshwar Temple Trust (about 10 acres of Gora village land) and Department of Forests (40 acres of Navagam village land). The camp and office of the State Reserve Police Force also stand on the same land. This is illegal. In 1999-2000, the people approached the Grievance Redressal Authority (GRA) in Ahmedabad and got a stay order against the government diverting their extra lands acquired but not used for the project, which is about 200+ hectares. The GRA in 2000 also promised the villagers and Narmada Bachao Andolan (NBA) that it would compel the SSSNL & Sardar Sarovar Punarvasavat (rehabilitation) Agency

[SSPA] to develop a rehabilitation action plan for the people in these six villages. However, since then nothing has happened but for the pushing ahead of the tourism project and diverting unused land for purposes which are not public purpose.

This case only reinforces the critical need for "Public Purpose" to be given a clear and distinct definition that does not leave any scope for wide (even wild) interpretation and misuse. In its present form (as defined in the Land Acquisition Act, 1894 and that proposed in the draft Land Acquisition Amendment Bill 2007 and the Rehabilitation and Resettlement Bill 2007 it grants wide license to the government to acquire land. It has been a long standing demand of the communities who have borne the brunt of displacement that "Public Purpose" should be defined in clear terms. The National Advisory Council (Government of India) had in its report on the Rehabilitation and Resettlement Policy attempted to define and outline qualifiers for public purpose and public interest, as these concepts have been instrumentalised to "legitimise" and justify displacement.<sup>18</sup>

The Parliamentary Committee on Welfare of Schedule Caste/Schedule Tribe, Ministry of Welfare, also had in its 59th Report on 'Rehabilitation of Displaced Tribals by Major projects of Madhya Pradesh' had clearly recommended that "the surplus land of tribals compulsorily acquisitioned and lying idle with the acquiring body be returned back to the original land owners".

Such illegal transfer and acquisition of land in violation of the clause on public purpose and for private developers is likely to be facilitated by the tourism policy that the Gujarat Government is planning to announce by mid-2008.<sup>19</sup> This proposes that tourism

<sup>18</sup>This has also been the demand of most activists and civil society organisations, including EQUATIONS. Refer to The Rehabilitation & Resettlement Bill, 2007 - Critique Paper, EQUATIONS, January 2008

<sup>19</sup>In a bid to give a thrust to tourism, the Gujarat Government will be announcing their new incentive-packed tourism policy by mid-2008. A highly placed official of the Tourism Corporation of Gujarat Limited (TCGL) informed Travel Biz Monitor that the government is currently in the process of drafting the new tourism policy. "The policy will be finalised before the state's budget session and will be announced latest by mid-2008," the official stated. The official further added that the government will be offering various incentives for the investors. In its proposed policy, the government plans to bring down sales tax for tourism and travel industry from 12.5 to four per cent, as well as abolish the luxury tax. Refer "Gujarat Government to announce new tourism policy by mid-2008". Moreover, it will also introduce the Hotel Investment Incentive Scheme to set-up hotels and resorts in Gujarat. The proposed incentives include 100 per cent exemption from luxury tax for seven years, 50 per cent exemption from entertainment tax for five years and 50 per cent tax holiday on power supply for five to seven years, depending on the investments and type of hotel category (star and non-star). It is also considering to offer 15 and 25 per cent concessions on property tax to investors who set-up budget or star category hotels. The state government is also planning to earmark a whopping budget of Rs 350-odd crore for the tourism industry during the financial year 2008-09. January 28, 2008. <http://www.travelbizmonitor.com/articleDetails.aspx?id=2070>, visited on 10.02.08.

projects get benefits such as facilitation of land acquisition for the projects concerning setting up of hotels, restaurants and apartment hotels etc. Existing arrangements for grant of government waste land to industrial units is being made applicable to various tourism projects. Arrangements are made to acquire private land under Land Acquisition Act for various tourism projects by companies registered under the Companies Act.

Even B G Verghese an ardent supporter of big dams ,in a June 2006, lecture on “Narmada, displacement and tribals”, said, “To eradicate the economic disparity among tribals caused by the dam, mainly among Bhils inhabiting the area above the dam, the government should initiate development measures by allocating a chunk of resources gained.” (IANS, 08 June 2006) The Government of Gujarat and the SSNNL do not think so.

In the words of Justice S M Daud (Retd.), who after visiting the rehabilitation sites in Gujarat and talking to the oustees commented, “Admitting that displacement, irrespective of whether it is voluntary or otherwise, is traumatic, it must be pointed out that the Narmada oustees have undergone a terrible ordeal. No matter whether the land has been lost in the reservoir, construction of the canals, colonies or what so ever, none of the oustees are free from a feeling that they have been cheated, looted and humiliated. The new settlements lack basic amenities like negotiable roads, not to speak of piped water supply, electricity, schools and hospitals. The small holdings awarded by way of compensation to those whose lands have been acquired for reservoir does not take into cognizance the quality of the soil and the supplements received by the oustees from the proximity of forests and the river in the old habitations.”

Justice Daud further added, “A disturbing feature of the affair is the repression let loose on the affected people and their supporters. The measures taken and strategies adapted to confront the agitations range from annoying surveillance to downright hooliganism. The affected people are arrested at any time. Their homes are invaded at unearthly hours. Their children and womenfolk are pushed about and insulted as if they are cattle. Taken in buses to distant places, they are left in jungles and lonely roads ... a calculated attempt is being made to shout down the protesters and drive out the affected people and their sympathisers from the vicinity of those determined to use their powerful perches to perpetuate monstrosities. (The fate of the Gujarat Ousteas, the Indian Peoples Tribunal on Environment & Human Rights, Sixth Report, 1994, Mumbai)

The villages of Kevadia, Gora, Limadi, Waghoria, Navagam and Kothi are facing a complete wipe out today. Soon there will be no Kevadia, Limadi or Gora: neither Hansaben, Shantibhai, Dharma,

Laliben nor Narsinghbhai. Only view points 1, 2 or 3, ponds 2, 3 or 4, a golf course or water park and of course a tribal museum and the grotesque dam if SSNNL carries on without taking into consideration the diverse impacts of the project.

Though the villagers still continue their struggle, their will to stand ground is being suppressed (by the non-responsive authorities) fast. They have been on a relay fast for more than six months now. According to the local communities there has been no engagement from the government to dialogue & resolve the problems faced by them. The effect of the long battle is telling on them and their livelihood. However exhibiting strength and perseverance their struggle continues mainly to get recognized as the ‘Project Affected’, in the same way as those affected in the submergence zone and receive a proper compensation package from the authorities.



Tourism infrastructure in the backdrop of the Sardar Sarovar Dam



Tourism infrastructure to be developed on both banks



Proposed boating facility



Narmada Nihar Hotel



The proposed TSM related map



Facilities in Narmada Nihar

## Annexure- 1

***Table I - The rights and responsibilities of the Panchayats/ Municipalities as per the 73rd and 74th Amendment of the Constitution with respect to Tourism related issues and vis-a-vis expectations of the tourism industry.***

These rights and responsibilities are based on the items specified in the *XIth Schedule (Powers and Responsibilities of Panchayats)* and *XIIth Schedule (Powers and Responsibilities of Municipalities)* of the Constitution of India. The state governments should enact legislation under Article 243 and 244 of the Constitution of India to operationalise the mandate of decentralisation of power, participatory democracy at the grassroots and the very concept of local self governance as mandated by the 73rd and 74th Amendment of the Constitution of India. While many states have gone ahead in drafting legislations in this regard, actual devolution of power and authority is yet to become truly effective in the country. These rights and powers of the Panchayats and municipalities with respect to tourism vary from state to state- depending upon how much the state law relating to local self governance actualises through the state legislation on LSGIs.



Upgradation of existing infrastructure



Refusing to give up

Rights and powers of the Panchayats/ Municipalities	Requirements of the Tourism Industry	Remarks
Land improvement, implementation of land reforms. (As per the XIth Schedule)/ Regulation of land use, construction of building and town planning (As per XIIth Schedule)	Requires land to build hotels, lodges, resorts, swimming pool, casinos, golf course etc.	For acquisition of any land within the territorial area of a local body, tourism industry needs permission of the Panchayats/ Municipalities as the case may be.
Urban forestry, protection of the environment and promotion of ecological aspects (Schedule XII)/ Land consolidation and Soil conservation (Schedule XI).	Consumption of natural resources.	Permit of the Municipality/ Panchayat is needed as it belongs to the local people and they have legal right over the natural resources as a result of living there for generations (Easementary Right).

Rights and powers of the Panchayats/ Municipalities	Requirements of the Tourism Industry	Remarks
Acquiring land for development projects and rehabilitation and resettlement of persons affected as a result of any projects undertaken in Scheduled areas has to be done in consultation with either Gram Sabha or the Panchayat at the appropriate level. (So that the tribal people of the Scheduled and Tribal Areas do not have to wait for the concerned authorities to act in the vital matter of land exploitation and land alienation). (Part X of the Constitution of India- through PESA)	Requires land to build hotels, lodges, resorts, swimming pool, casinos, golf course etc. and to carry out other facilities related to tourism.	Requires permission of the local body.
Minor irrigation, water management and watershed development (Schedule XI)/ Water supply for commercial, domestic and industrial purposes (Schedule XII).	Requires huge quantity of water for the use by guests in hotel industry/resorts - swimming pools; golf course; use of water by guests for regular chores.	Requires the permit of the local body.

Rights and powers of the Panchayats/ Municipalities	Requirements of the Tourism Industry	Remarks
Planning and management of minor water bodies in Scheduled Area (through PESA).	For regular supply of water it depends on the local rivers, ponds, lakes and streams.	Requires the permit of the Panchayats.
Water supply for domestic, industrial and commercial purposes. (Schedule XII)	Requires water for various purposes related to the hotel industry. (bathing washing, drinking, swimming, cleaning gardening etc.	Requires the permit of the Panchayats.
Roads, culverts, bridges, ferries, waterways and other means of communication, (Schedule XI)	Basic infrastructure required to facilitate tourism. For the smooth movement of tourists.	Requires the permit of the Panchayats.
Planning for Social and economic development. (Both the Schedules)	Requires proper health facilities, sanitation, garbage disposal system, regular water supply, fuel, drainage system, markets, fairs etc.	Requires the permit of the Panchayats.
Minor forests produce and maintenance of community assets (community resources)	Opening the forests to tourists. Building resorts inside the forest. Providing Safari to have close look at the animals. Bonfire etc.	Requires the permission of the Panchayats as well as forest Department.

Rights and powers of the Panchayats/ Municipalities	Requirements of the Tourism Industry	Remarks
Rural electrification, including distribution of electricity (Schedule XI)/ Public amenities including street lighting, parking lots, bus stops and public convenience (Schedule XII)	Requires street lights; parking lots, bus stops, public conveniences for the tourists visiting the area.	Though generation of electricity comes under the purview of the state, permit of the Panchayat is required for street lighting and that of the Municipalities for street lighting, parking lot, bus stops and other public conveniences within the municipality limits.
Solid waste management (schedule XII)	Requires proper and safe garbage disposal system.	Tourism industry expects the municipality to provide required arrangements for the same.
Health and sanitation, including hospitals, primary health centres and dispensaries (Schedule XI)/ Public Health and Sanitation conservancy (Schedule XII).	Requires proper drainage, precautionary health measures to curb contagious diseases. Spraying disinfectants.	Tourism industry expects the Panchayats / the Municipality to provide the necessary facilities.
Cultural Activities (Schedule XI) / Promotion of cultural, educational and aesthetic aspects. (Schedule XII)	Organizing festivals of local and indigenous deities, cultural displays entertainment activities, circus, fairs.	Tourism industry expects the panchayats/ Municipalities to arrange and facilitate the same.

Rights and powers of the Panchayats/ Municipalities	Requirements of the Tourism Industry	Remarks
Welfare of the weaker section and in particular Schedule Caste and Schedule Tribes.	Tourism industry has no requirement or interest in it. Affirmative action or reservation in the private sector has not been taken up by the industry. In the case of tribes - the culture, crafts and customs of local communities are mostly commodified.	Tourism industry does not have any interest on the issue.
Women and child development.	Tourism industry has no serious interest	
Provision of urban amenities and facilities such as park gardens and playgrounds (schedule XII) Maintenance of community assets (Schedule XI).	Uses public roads, street lights and roadside trees and parks for promoting and expanding tourism.	Expects the Municipality/ Panchayats to provide and maintain the same.
Market and fairs.	Local public market (Sunday markets and weekly markets), fish market, vegetable market, local handicraft, jewellery, shells and pearls etc. - Showcases them to attract tourists in the area and source local products sometimes.	Expects the Panchyat to organise and maintain the same. Economic returns to the locals have proved to be negligible.

In *Table I* the first and the second Column lists out the mandatory power and functions of the Panchayats and Municipalities given under the Constitutional Amendment Act namely 73rd and 74th and the requirements of the tourism industry respectively.

The table makes it very clear that tourism industry is very much dependent on the Panchayats and Municipalities because they use the resources, which fall, within the Panchayat/ Municipal limits. Hence it becomes very important that the local Panchayat / Municipality are informed about tourism developments in the area. LSGs should have a right to decide if such tourism development should be allowed within their limits keeping in mind that all tourism operations are entirely dependent on natural resources of the area where they are developed and extensively uses the local natural resources.

As per Article 243 of the Constitution of India the state governments are mandated to enact laws that will delegate powers to the LSGs. However, in reality many states are still dilly-dallying with the enactment of the Panchayat Act in the state with defined delegation of powers to the LSGs. The matter is much more grave when it comes to the implementation of PESA in Scheduled Areas of the states. Very few states till date have shown the political will to recognise and implement PESA in true spirit, in the regions inhabited by the indigenous communities.

It is often argued (by those who in principle oppose decentralisation) that the 73rd and 74th amendments along with the Eleventh and the Twelfth Schedule of the Constitution actually do not carve out the functional domains of the Panchayats. The Schedules only lists out the developmental areas where such local governments could have a role in planning for economic development and social justice and in the implementation of such plans. However, it is clear from the Statement of the Objects of the 73rd and 74th Amendment that need was felt for long by all working in the grassroots and in planning for establishing some constitutional norms in order to provide some uniformity and teeth to the powers and mandate of LSGs. They create legally enforceable rights and obligations which cannot be ignored. The State Governments are bound to confer on LSGs powers and functions as enlisted under the respective Panchayat Raj Act in each State thus statutorily involving them in planning and development of the respective zones that they represent.

By virtue of the Constitutional status bestowed upon the LSGs, they acquire the potential to revolutionalise the way local self governance has been seen in this country. It is important to remember that it is not only a system of participative self-governance, but it ensures that the voices of the poor, marginalized, oppressed and those who are discriminated are heard. It ensures political empowerment.

## Annexure II: PESA in the State of Gujarat.

### Details of the Scheduled Areas in Gujarat

#### District Taluka (Block)

1. Sabarkantha Khedbrahma, VijayNagar, Bhiloda, Meghraj
2. Panchmahal Dahod, Jhalod, Santrampur, Limkheda, Devgadhbharia
3. Vadodra Chhota Udaipur, Naswadi, Tilakwada, Jetpur-vapi
4. Bharuch Dediapada, Sagbara, Valia, Nandod, Jhaghdia
5. Surat Songadh, Uchchhal, Vyara, Valod, Nizar, Mandavi, Mahuva, Mongrol, Bardoli
6. Valsad Vansada, Dharampur, Chikali, Paradi, Umargan
7. Dang Ahwa

The definition of local area in Gujarat PESA bears semblance to the definition of village under Central PESA. Though it is this local area, which constitutes a village, the official declaration of the same has been left to the governor of the State. In consonance with the basic principles of the Central PESA, Gujarat has now recognized by law that the Gram Sabha shall endeavor to take measures to safeguard & preserve:

- The traditions and customs
- The cultural identity
- The community resources
- The customary mode of dispute resolution.

#### ***Our Powers! But how do we exercise them?***

The Gujarat PESA lists the powers to the Gram Sabha and to the Panchayat at the appropriate level. Some of the powers are to the Gram Sabha alone, some to only the Panchayat at appropriate level and some to either of the institutions. Note that in Gujarat, those powers that are necessarily given to the Gram Sabha as well as any other level of Panchayat is absent. The allocation of powers by the State of Gujarat to the various tiers of local government are in the following manner:

Table 2.1 Comparative Inter Tier Allocation of Powers		
Power	Inter-tier Allocation	
	Central PESA	Gujarat PESA
1. Consultation before Land Acquisition for development projects and before resettling or rehabilitating persons affected by such projects	GS or PAL	Taluka Panchayat
2. Prior recommendation in granting prospecting license or mining leases for minor minerals as well as for grant of concessions for the exploitation of minor minerals by auction.	GS or PAL	-----
3. Power for planning and management of Minor Water Bodies	PAL only	Village Panchayats
4. Enforcing prohibition, regulation or restriction on the sale or consumption of any intoxicants	GS and PAL	Village Panchayats
5. Ownership of minor forest produce	GS and PAL	Village Panchayats
6. Prevention of alienation of land in Scheduled Areas and taking appropriate action to restore unlawfully alienated land of Scheduled Tribe	GS and PAL	District Panchayat
7. Control over institutions and functionaries in all social sectors	GS and PAL	Village Panchayats
8. Management of village market	GS and PAL	-----
9. Control over Money Lending	GS and PAL	Village Panchayats
10. Control over local plans and resources for such plans including tribal sub-plans	GS and PAL	Taluka Panchayat

Table 2.1 Comparative Inter Tier Allocation of Powers		
Power	Inter-tier Allocation	
	Central PESA	Gujarat PESA
11. Approval of the developmental plans, programmes and projects for social and economic development	GS only	GS only
12. Identifying and selecting beneficiaries for poverty alleviation and other programmes	GS only	GS only
13. Granting of certificate of utilisation of funds or plans programmes and projects that are implemented by the Panchayat.	GS only	GS only

It is interesting that though the Gujarat Panchayats Amendment Act, 1998 (Act No. 5 of 1998), was passed to operationalise the decentralisation of the process of governance further in Schedule Areas as prescribed by the Constitution of India. According to Section 278A, this Act shall apply to the Scheduled Areas of the State as referred to in clause (1) of Article 244 of the Constitution of India, subject to the modifications specified in Schedule IV.

Interestingly, Section 237 of Chapter XIV of the Gujarat Panchayat Raj Act, 1993, very specifically lays down that the State Government shall continue to hold power to prepare for the whole state the Five Year plan or project or propaganda relating to the construction of roads, water supply, or any other matter. The Government shall hold the same authority for undertaking any project or programme concerning any district or more districts. The Act does not specify whether in the process, the government, will have to consult the Grama Sabha in Vth Schedule Areas in the State where such activities will directly affect the lives of the local communities.

These show that the will or the urge of the state government of implementation of Panchayat Raj System in the State of Gujarat and especially PESA is quite abysmal. According to most critiques, the Panchayat Raj institutions are not given any financial and administrative powers in Gujarat. For example, the health department is of the view that Panchayat should not be made

responsible to supervise and monitor its work<sup>20</sup>. Unlike the present practice, bottom up approach should be followed to involve community members in the planning of any developmental activities, be it development of infrastructure facilities like roads or issues related to public health and family welfare. In Gujarat, Panchayat Raj Institutions have been existing for several years, however, the differences between the elected members of Panchayat and Government Officials are still to be bridged<sup>21</sup>.

**The question arises what happens to these legal rights, responsibilities and functions of the Local Self Governing Institutions in these PESA Areas when Area Development Authority is formed?**

Taking a cue from the proposed structure, functions and powers of Development Authority, as envisaged by Development Authorities mushrooming in various parts of the country, specially those areas which are seeking to have huge infrastructure Developments and tourism investments, it can be said that all powers, functions and rights of making decisions with respect to these areas shall get transferred to these Authorities. The LSGIs, including the Grama Sabha in PESA areas, will lose their complete entity and powers. The concern, as rightly pointed out by an activist, is that panchayats are "institutions of self-government"<sup>22</sup> and they are the most important instrumentalities of democracy. Without meaningful and effective democratic institutions at the grassroots, all institutions at the higher level will be form without content<sup>23</sup>. It is stifling of grassroots democracy in a round about way thus centralising the decision making powers and control over resources<sup>24</sup>.

Tourism is presented as a growth engine for economic development and social development. However, in reality the tourism industry and forms of tourism rarely works to privilege the needs and aspirations of the local communities and benefit them directly. For example in Vembanad in Kerala the arrival of tourism industry was well received by the local people initially. But in later

years, the local people began to feel the pressures of tourism in many ways. Some of the major impacts due to tourism were that the land value increased many fold in the potential areas for tourism ventures; the clustering of the resorts on the banks of Vembanad lake denied access to local people involved in fishing and shell collection; increased number of speedboats, motor boats and house boats resulted in the damage of fishing nets of the community and though employment opportunities in the tourism sector opened up it did not help the local community much as most of the employees in big hotels were appointed from outside and the contract labourers appointed by the tourism industry did not have job security.

**A closer look to the resources required by the tourism industry and a reference to the above Tables reveal that tourism industry uses resources which fall under direct jurisdiction of institutions of local self-governance. Hence it becomes critical and matter of concern when any new policy or legislations is passed that restricts or forbids the institutions of local self governance from performing their constitutional and legislative mandate and exercising their powers. Creation of parallel institutions / superimposed institutions only multiplies the confusions and re-enforces ambiguities. Should a Development Authority has the more narrow agenda of infrastructure development, pursue investment in tourism development be allowed to override these constitutional rights of the communities with respect to the LSGIs in the state? It really calls for intensive Public Debate.**

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<sup>20</sup> Refer Status of Decentralization in Panchayati Raj Institution in the State of Gujarat (1999-2000), Dr. A.M.Khan, 1999, Department of Social Sciences, <http://www.nihfw.org/asp/ResearchStudies.asp?currentpage=6>

<sup>21</sup> *Ibid.*

<sup>22</sup> Article 243G and 243W of the Constitution of India

<sup>23</sup> Refer A dismal record of grassroots democracy, By George Mathew, PUCL Bulletin, September 2002.

<sup>24</sup> For example according to Section 3(2) and 5 (1) of the Kerala Tourism (Conservation and Preservation of Areas) Act, 2005, even though other legislations might be in operation which gives rights to the LSGIs and other statutory bodies, as soon as an area is brought under Tourism Development Authority, all developmental activities in that area shall be carried out in accordance to the guidelines issued by the Authority.

### Annexure III

Gujarat Panchayats Amendment Act, 1998 (Act No. 5 of 1998)

This Act amended the **Gujarat Panchayats Act, 1993**

It is hereby enacted in the Forty-ninth Year of the republic of India as follows: -

1. (1) This Act may be called the **Gujarat Panchayats (Amendment) Act, 1998**
2. In the **Gujarat Panchayats Act, 1993** (hereinafter referred to as the “the principal Act”) after section 278, the following sections shall be inserted namely:

278A This Act shall apply to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, subject to the modifications specified in Schedule IV.

278AA The enactments specified in Schedule V shall in their application to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, be amended to the extent specified in column 3 Of the said schedule.”

3. In the principal Act, after Schedule II, the following Schedules shall be added, namely: -

#### **SCHEDULE IV**

(See section 278 A)

(Modifications subject to which this Act applies to the Scheduled Areas of the State of Gujarat)

2. For section 2, the following section shall be substituted, namely: -
4. (1) There shall be Gram Sabha for a village for performing such functions as are provided by or under this Act.
- (2) The Gram Sabha shall consist of persons whose names are included in the list of voters of electoral divisions of that village.
- (3) The gram Sabha shall perform the following additional functions:
  - (a) The Gram Sabha shall endeavor to safeguard and preserve the traditions and customs of the inhabitants of the village people, their cultural identity, community resources and the customary mode of dispute resolution.

- (b) The gram Sabha shall
  - (i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Village Panchayat.
  - (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes in the village”.
3. In section 7, to sub-section (1) the following proviso shall be added, namely: -

“Provided that while making a recommendation in respect of a local area in the schedules area, it shall be ensured that the *local area* shall ordinarily consist of a habitation or a group of a habitation or a group of habitations or hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditions and customs.”

11. In section 108 after sub-section (4), the following sub-section was added, namely: -

“ (5) (a) For the purposes of this Act, There shall be *vested* in the Village Panchayat minor forest produce found (*except found in the areas of National Parks or Sanctuaries*) in such area of a forest as is situate in the jurisdiction of that village”

- (b) the proceeds of the minor forest produce shall be paid into and form part of the village fund
- (c) Nothing in clause (a) shall be construed as vesting in the village Panchayat the land in the area of forest referred to in clause (a) trees and plantations thereon.

Explanation: For the purposes of this sub-section the expression “minor forest produce” shall have the same meaning as assigned to it in clause (9) of section 2 of the Gujarat Minor Forest Trade Nationalisation Act, 1979.

12. In section 112, after sub-section (1) the following sub-section shall be inserted, namely: -

“ (IA) The Village Panchayat shall obtain from the Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programmes and projects taken referred to in sub-section (3) of section 4.”

13. After section 132, the following section shall be added, namely: -

“132 A The *Taluka Panchayat* shall be consulted (a) before acquiring under the Land Acquisition Act, 1894 any land situate in the taluka for any development project; (b) before resettling or rehabilitating persons affected by such project.

14. In Schedule I-

- (1) in entry 1 after sub-entry (i), the following sub-entry shall be inserted, namely: -
  - (ia) Enforcing prohibition and regulating or restricting the sale and consumption of intoxicants” is vested with the *village Panchayat*.
- (2) in entry 7, after sub-entry (k), the following sub-entry shall be inserted, namely:
  - (k-i) Planning and management of minor water bodies shall be vested with the village Panchayat.
- (3) after entry 10, the following entry shall be added, namely:-
  11. the power to exercise control over institution and functionaries in all social sectors” is vested with the village Panchayat.
15. In Schedule II, in part I, in entry 5, after sub-entry (d), the following sub-entry shall be added, namely: -
  - (e) Control over local plans and resources for such plans including tribal sub-plans” is vested with *taluka Panchayat*