



PESA

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1. Background

The provisions of Part IX of the constitution relating to the Panchayats are not applicable to the Fifth Schedule areas. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, popularly known as PESA.

At present, **nine states have Fifth Schedule Areas**. These are: Andhra Pradesh, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. (Telangana yet to submit the list of Scheduled areas to the President)

2. Important Features of the Act

Provisions under PESA include the following.

- Gram Sabha at the para, majra and tola levels (i.e. at district, taluka and village level)
- Gram Sabha to protect the traditions, beliefs and culture of the tribal communities
- Local disputes to be resolved by the Gram Sabha
- Gram Sabha to manage and protect common properties based on their traditional systems of management and protection
- The administration to seek permission from the Gram Sabha in case of land acquisition
- Gram Sabha to have the rights over minor forest produce; powers to restore land to the tribals; and control over money-lending to tribals, tribal welfare activities by social organizations and local plans and sub-plans for the development of tribal areas and communities
- Gram Sabha to have the control over local markets and melas
- Recommendations of the Gram Sabha or the Panchayats at the appropriate level for grant of prospecting license/mining lease for minor minerals in the Scheduled Areas grant of concession for the exploitation of minor minerals by auction.
- Gram Sabha to have rights to control the distillation, prohibition and manufacture of liquor.
- District panchayats to have rights and powers similar to the district panchayats falling under Sixth Schedule. The Fifth Schedule suggests that the Governor and the Tribes Advisory Council (TAC) should protect/promote the welfare and advancement of the Scheduled Tribes.

3. Limitations and reasons for ineffective implementation

- PESA can be only as effective as the PRIs, and that in turn depends on the capability of the elected representatives to deliver.
- For PESA Gram Sabhas are the units at the ground level. Most states have enacted laws that provide the bulk of the powers to the **Gram Panchayat**, and not the **Gram Sabha** hence they remain subordinate to Gram Panchayats.
- Lower level of awareness and education among the tribals comes in the way of raising assertive voices.
- PESA is applicable only to those areas which are legally regarded as Scheduled Areas. A significant number of tribals living outside the scheduled areas are not covered by this legislation.
- While the political decentralization has been largely successful, with elections held regularly and with ample participation of people, there is only superficial administrative and fiscal decentralization of powers which still remain with the State Governments.
- Panchayats have not been given adequate responsibilities to levy and collect taxes, fees, duties or tolls.
- Recommendations of State Finance Commissions have been either accepted partially or implemented selectively.
- Government functionaries treat tribals as inferior and hence, District administration and forest departments subordinate the Gram Sabha hence making the Act ineffective.

- Extensive collusion, between politicians, bureaucrats and the private companies, which has displaced scores of tribals from their land.
- State government laws and provisions cleverly negate the PESA Act. For example, PESA is for rural areas, states upgrade rural panchayats in scheduled areas to urban panchayats to bypass PESA and give clearance to mining and industries in tribal areas.
- The PESA Act does not specify rule making power or provide a time period by which States have to frame Rules.
- There is no provision for appeal against the decisions of the Gram Sabha, which is prerequisite for true democratic governance.
- Ministry of Panchayati Raj and the Ministry of Tribal Affairs have overlapping influence on implementation of PESA and they virtually function in isolation.
- There is a complete absence of a functioning grievance redressal mechanism to address routine violations of rights of tribals.

4. Proposed changes

The PESA Act does not specify rule making power or provide a time period by which States have to frame Rules. The language of some Sections of the PESA Act has been interpreted against the spirit of the Act. In order to remove some infirmities a draft amendment bill had been proposed in 2013, and is still pending.

- Minor minerals in the act to be replaced with major and minor minerals. This will mandate necessary permission of Gram Sabha with regard to licensing and exploration increasing the stake of locals in deciding upon the impact of mining projects on their lives and habitat.
- 'Prior informed consent of' to be 'taken' to replace 'consulted' for taking permission of the 'Gram Sabha or the Panchayats' at 'appropriate level' for acquisition for development and rehabilitation project. It will help locals to decide which project is beneficial for them rather than a top-down decision making.

5. Way Forward

In the development offensive against the Maoists, PESA is a crucial weapon. Hence, it needs comprehensive reforms in provisions and implementation for holistic uplift of tribal areas. Over and above the aforementioned amendments following should be done:

- Activate Gram Sabhas in a Mission Mode and enable it to exercise its powers & functions including in relation to planning & implementation of Central/State schemes, grant of UCs and dispute resolution.
- Ensure that complete information about the land to be acquired and impact of the proposed project, is placed before the Gram Sabha and its recommendations are generally followed.
- Mandate State Election Commission to delimit villages.
- Incorporate definition of Minor Forest Produce (MFP), as provided in the Forest Rights Act, 2005, in all laws and rules. Undertake management of MFP with the consent of the Gram Sabha and in case MFP is collected by an outside agency, the net income should go to the people.
- Enable the Gram Sabha, particularly women, to take decisions regarding the opening and continuance of liquor shops, sale of intoxicants, etc.
- NGOs working with PRIs are most suitably placed to take up the matter related to PESA. They need to provide voice to the grievances of poor tribals and make them aware of their rights given by the PESA.
- Pointing flawed laws of state governments and their interference in PESA implementation is another initiative civil society can undertake.
- Social audit rules should be issued for all government programs in Schedule Five areas. On the lines of the Citizen's Panel for NREGA constituted last year by the Ministry of Rural Development, a National Citizen's Panel for PESA should be constituted.
- It is widely felt that functionaries of the state and other powerful interests have no fear of any punitive action for their acts against the tribals. Hence, some punitive mechanism should be constituted.

Union Ministry of Tribal Affairs has initiated a separate scheme for promoting education of ST girls at primary levels in areas that had low female literacy level. It also provided cash incentives for sending girl children to residential schools.

Special provisions were made for the empowering STs that included lending funds and providing rights to Minor Forest Produce. The Biodiversity Act has been enacted to protect the traditional knowledge of the tribals with regard to herbal/biological products.

The amendment to MMDR Bill and creation of District Mineral Foundation is also a positive step in the direction of securing benefits accrued from mining for tribals.

Full-fledged implementation of PESA will give about Rs 50,000 crore to tribal communities to develop themselves.

Nothing would deal a bigger blow to the Maoists than participative development by, for and of the tribal communities. It will curb the sense of delineation of the tribals and integrate them in the task of nation making.

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