

# Provisions Of The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)

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## **Manifest pedagogy:**

PESA offers a better way to strengthen tribal hands in the larger interest of social justice as well as deepen grass-root democracy. But there is a clear indication that sincere implementation of PESA has not been seriously attempted by the state governments. There is a need that Gram Sabha institutions should be made an effective body of district administration and not treated merely as institutions of local governance.

**In news:** Year 2021 marked the 25th year of enactment of the Panchayats (Extension to Scheduled Areas) Act 1996 (PESA).

**Placing it in syllabus:** Governance

## **Static dimensions:**

- Key provisions of the 73rd amendment act
- Key Provisions of PESA, 1996

## **Current dimensions:**

- Challenges in implementing PESA
- Case study of implementation of PESA (Jharkhand)

## **Content:**

### **Key provisions of the 73rd amendment act**

- The 73rd Amendment 1992 added a new **Part IX** to the constitution titled “The Panchayats” covering provisions from **Article 243 to 243(0)** and a new **Eleventh Schedule**

covering **29 subjects** within the functions of the Panchayats.

**Salient Features:**

- **Gram Sabha** is a body consisting of all the persons registered in the electoral rolls relating to a village within the area of Panchayat at the village level. It is the only permanent unit in the Panchayati Raj system and not constituted for a particular period. The powers and functions of Gram Sabha are fixed by the state legislature by law.
- It provides for a **3 tier Panchayat system**, which would be constituted in every state at the **village level, intermediate level and district level**. This provision brought uniformity in the Panchayati Raj structure in India.
- All the **members of these three levels are elected**. Further, the chairperson of panchayats at the intermediate and district levels are indirectly elected from amongst the elected members. But at the village level, the election of chairperson of Panchayat (Sarpanch) may be direct or indirect as provided by the state Panchayati Raj Act.
- The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women. The State by law may also provide for reservations for the offices of the Chairpersons.
- A clear **term for 5 years** has been provided for the Panchayats and elections must take place before the expiry of the terms. However, the Panchayat may be dissolved earlier on specific grounds in accordance with the state legislations. In that case the elections must take place before expiry of 6 months of the dissolution.

- Any person who is qualified to become an MLA is qualified to become a member of the Panchayat, but for Panchayat **the minimum age prescribed is 21 years.** Further, the disqualification criteria are to be decided by the state legislature by law.
- The State Government needs to appoint a **Finance commission every five years** and its report would be laid on the table in the State legislature.
- The State Government can make provisions for audit of accounts of the Panchayats.
- **Article 243K** provides for the constitution of a State Election Commission in respect of the Panchayats, which would have the power to supervise, direct and control the elections to the Panchayats and also prepare the electoral rolls.
- **Article 243 O** bars the courts to interfere in the Panchayat Matters. No election to any Panchayat is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.
- Provisions of Panchayats shall be applicable to the UTs in the same way as in case of the states but the President by a public notification may make any modifications in the applications of any part.
- The **provisions of part IX are not applicable to:**
  - Entire states of Nagaland, Meghalaya and Mizoram
  - Hill areas in the State of Manipur for which District Councils
  - The district level provisions shall not apply to the hill areas of the District of Darjeeling in the State of West Bengal which affect the Darjeeling Gorkha Hill Council.
  - The reservation provisions are not applicable to Arunachal Pradesh.

## Key Provisions of PESA, 1996

- Based on **Dilip Singh Bhuria committee** report, it was **enacted on 24 December 1996** to extend the provisions of Part IX of the Constitution to Scheduled Areas, with certain exceptions and modifications.

### Scheduled areas-

- “Scheduled Areas” means the Scheduled Areas as referred to in Clause (1) of **Article 244[4]** of the Constitution.
- These are areas identified by the **Fifth Schedule** of the Constitution of India.
- These areas are found in **ten states** of India which have a predominant population of tribal communities.
- They are **Andhra Pradesh (including Telangana), Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.**
- These are not covered by the Panchayati Raj Act.
  
- The PESA Act conferred the absolute powers to Gram Sabha, whereas state legislature has given an advisory role to ensure the proper functioning of Panchayats and Gram Sabhas.
  
- The power delegated to Gram Sabha cannot be curtailed by a higher level, and there shall be independence throughout.
  
- Section 4 (i) of PESA provides the right to Gram Sabhas to be consulted before land acquisition.
- The consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

### Following **powers and functions** have been provided to the Gram Sabhas:

- Protection of traditional belief, the culture of the

tribal communities

- Resolution of the local disputes
- Prevention of land alienation
- Management and protection of the common properties based on their traditions
- Management of village markets
- Right to control production, distillation, and prohibition of liquor
- Exercise of control over money-lending
- Any other rights involving the Scheduled Tribes.
- The Governor of each State having Scheduled Areas shall annually make a report to the President regarding the administration of the Scheduled Areas in that State.
- The provision lays down the responsibility on the Governor to ensure that laws that are contrary to the interests of Scheduled Areas may be suitably modified.
- In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the SCs and ST families, a Development Plan shall be prepared, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the SCs and STs on the alienated land.
- In case of land being acquired from members of the SCs and STs, at least one-third of the compensation amount due shall be paid to the affected families initially as first installment and the rest shall be paid after taking over the possession of the land.

The **Samatha judgment of the Supreme Court in 1997** was a landmark judicial intervention in scheduled Areas and PESA. The case was against the Government of A.P for leasing tribal lands to private mining companies in the scheduled areas. The Court in its final verdict, declared that 'person' would include both natural persons as well as juristic persons and constitutional government and that all lands leased by the government or its agencies to private mining companies apart from its instrumentalities in the scheduled areas are null and

void.

## Challenges in implementing PESA

- PESA remains disempowered as only **four states have been able to publish PESA Rules**– **Andhra Pradesh** was the first state to publish the rules in 2011, followed by **Himachal Pradesh, Rajasthan and Maharashtra**.
- The state's PESA rules are set up at the group panchayat level and it does not recognise smaller units of governance like villages and hamlets etc...
- Verdicts passed by the gram sabhas are not taken seriously. E.g. not a single state has given control of minor forest produce to gram sabhas so far.
- Powerful people still have control over natural resources and the local community suffers if they try to claim their ownership.
- The state governments are acquiring land without the consent of gram sabhas. E.g. A study conducted by the Indian Institute of Public Administration highlighted that in the Khunti district of Jharkhand, 65% of people whose land was acquired were not even asked about it.
- The Governors of Scheduled Areas have hardly ever used their powers independently.
- After enacting PESA, the Union government brought several other legislations like the Land Acquisition Act, 2013 that empowered gram sabhas immensely and the Forest Right Act, 2006 that has provisions of PESA. Hence when people need to protect their rights and resources, they look up to these laws.

## Case study of implementation of PESA (Jharkhand)

Jharkhand, 28th state of India carved from the Southern part of Bihar in 2000, has the highest population of Adivasi people from **32 different tribes**, mainly Santhal (34 per cent), Oraon (19.6 per cent), Munda (14.8 per cent) and Ho (10.5 per cent) including the nine Particularly Vulnerable Tribal Groups

(PVTG).

But they have their own system of governance, which was, unlike the caste system, non-hierarchical. Every tribal village had a village council as the basic unit for self-governance.

The **entire social system was organised into three functional levels across major tribal communities** in the state. The first one is at the village level; the second at the cluster of five-six village levels and the third at community levels.

These forums used to act as the decision-making bodies for all matters related to administration, the Parliament and judiciary. All three tiers used to have regular meetings to discuss issues relevant to them. Consent from the whole village was considered to be the main component of this **decentralised decision-making process**.

But it had several **loopholes** including the absence of women in this entire process of decision making. It denied women's right to own property. The chiefs of the traditional self-governance system of tribes in Jharkhand would be selected hereditarily, though one might get removed from the responsibilities for inefficiency.

After the introduction of the **Bihar Panchayat Raj System (BPRS) in 1947**, these Adivasi traditional governance systems became weak due to the non-priority and neglect, industrialisation, displacement of Adivasis and urbanisation.

After the PESA Act came into existence, a total of 16 districts out of 24 came under the PESA provision in Jharkhand. As many as 2,071 Gram Panchayats in 135 blocks are included under the Schedule V area of Jharkhand. However, out of 22 provisions in the PESA, the state has taken only 7 of them and replaced the 15 provisions by the general administrative norms of the Panchayat system for non-Scheduled Areas.

The **partially implemented PESA has worsened self-governance in Adivasi areas** in Jharkhand due to the lack of clarity, legal infirmity, bureaucratic apathy, absence of a political will, resistance to change in the hierarchy of power etc.. Social audits conducted across the state have also pointed out that in reality different developmental schemes were being approved on paper by Gram Sabha as a vetting entity without actually having any meeting for discussion and decision making.

**Mould your thought:**

1. Has the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) become successful in making gram sabhas the institutions of self-governance? Examine.

**Approach to the answer-**

- Write the history of PESA.
- Brief about powers of Gram sabhas under PESA.
- Write down the challenges faced in its implementation.
- Conclusion