



A CRITICAL ANALYSIS OF THE PESA ACT, 1996 – IMPLEMENTATION, CHALLENGES, AND THE PATH FORWARD

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Abstract

The Panchayat (Extension to the Scheduled Areas) Act, 1996 also acknowledged as PESA was enacted with an aim to extend the mandates of local self-governance that was implemented through the 73rd amendment in 1992 in the form of Panchayati Raj Institutions (PRIs). PESA was enacted holding in mind the ethnicity of the people living in Scheduled Areas and, therefore, empowered the Gram-Sabhas for local self-governance among the tribal communities. The paper tries to study the present scenario of PESA after two decades of its implementation and how the Central Act is being adopted by the states in true letter and spirit. The paper employs descriptive and analytical methods to reach at generalisations. Secondary sources such as Acts, books and other materials those are available with the Ministry of Panchayat Raj (MOPR), Government of India are used in the study

Keywords –Scheduled, Areas, Government, Act, Gram Sabhas, effectively, PESA ,laws

Introduction-

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) is an important and key legislation to empower the tribal communities. The PESA Act is called “Constitution within the Constitution”. The act aims at devolving governance to Panchayats/Gram Sabhas in Schedule V areas for mainstreaming tribal development. The PESA Act provides the constitutional framework to preserve tribal self-governance, culture, customary laws and to protect their traditional way of living in Schedule V areas. The Act came into force on 24th December, 1996 in 10 states of the country with predominant tribal population, namely, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. The tribal self-governance was provided for through assignment of special powers to Gram Sabhas in the Act.

The PESA Act of 1996 is a testament to the political dedication to empowering tribal communities and reshaping power dynamics. Its core objective is to grant tribal communities



the ability to self-govern and preserve their beliefs, values, and way of life. Although the PESA Act originates from a Central Legislation, the onus of ensuring its effective implementation rests upon the states. A thorough analysis of governance within the framework of PESA reveals a spectrum of preparedness among Gram Panchayats to embrace progressive governance reforms. While some Gram Panchayats swiftly adjust to the evolving landscape, effectively wielding their newfound powers and responsibilities, others progress at a more gradual pace. Concurrently, a third category of Panchayats grapple with comprehending the extent of powers and duties delegated to them, often continuing with their established modes of operation. The focal point of this article is to delve into the interplay between the PESA Act and the tribal/customary governance systems in Scheduled Areas. This exploration aims to shed light on the intricate dynamics shaping the coexistence of formalized governance structures and traditional tribal practices, providing critical insights into the challenges faced by Gram Panchayats and emphasizing the imperative of aligning the administrative structures with the cultural fabric of tribal communities for meaningful and sustainable empowerment. The findings underscore the necessity of aligning administrative structures with the cultural fabric of tribal communities for meaningful and sustainable empowerment, emphasizing the need for targeted capacity-building initiatives, community awareness, and fostering inclusive decision-making processes.

Objectives of the Study

To understand the legal provisions and powers granted to Gram Sabhas under PESA. To critically analyze the conflict between state laws and central PESA provisions.

To identify the socio-political barriers in the effective implementation of the Act. To study the brief analysis of particular act & study of various committee report **Research Methodology**

For the purpose of the review secondary source of data was used. Data was collected from different sources like Circulars, Guideline etc. issued from Ministry of Panchayati Raj; Annual Reports, different government reports, reports of different committees formed by the government; website of the Ministry of Panchayati Raj, and other study reports from different sources. This study utilizes a Qualitative Research Method, involving: Doctrinal Research: Analysis of the Act, Court Judgments (e.g., the Niyamgiri case), and Government Reports. Comparative Analysis: Comparing the implementation status across states like



Maharashtra, Chhattisgarh, and Odisha.

Objectives of the Act

1. To extend the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas with certain modifications. 2. To provide self-rule for the bulk of the tribal population. 3. To have village governance with participatory democracy and to make the Gram Sabha a nucleus of all activities. 4. To evolve a suitable administrative framework consistent with traditional practices. 5. To safeguard and preserve the traditions and customs of tribal communities.

Key Provisions of the PESA Act

The Act provides the Gram Sabha with significant powers, including:

- **Mandatory Consultation:** Before land acquisition for development projects.
- **Ownership of Minor Forest Produce (MFP):** Giving tribals the right to manage and sell forest resources.
- **Control over Local Plans:** Power to approve plans and programs for social and economic development.
- **Regulation of Liquor and Money Lending:** Power to enforce prohibition or regulate the sale of intoxicants and control usury.

Critical Analysis of the PESA Act (The "Gaps")

A. Legislative Conflict-While PESA is a central law, "Land" and "Police" are state subjects. Many states have either not framed the rules for PESA or have passed state laws that dilute the powers of the Gram Sabha. For instance, the definition of "consultation" is often misinterpreted by authorities as mere "notification".

B. The Resource Paradox-Although PESA grants ownership of Minor Forest Produce, the forest departments often maintain a stranglehold on the transit and sale of these goods, leaving the tribal communities at the mercy of bureaucratic hurdles.

C. Role of the Gram Sabha vs. The State-In reality, the Gram Sabha is often bypassed in decision-making processes regarding large-scale mining or infrastructure projects. The "consent" of the people is frequently

A Brief Analysis of the Act: PESA is a most powerful act to protect the rights of tribes. The Governor enjoys extra-ordinary power as the sole protector of the legislation in the Scheduled



Areas. He or She can take action to amend the existing laws of the State or the Center which are in conflict with the provisions of the PESA. Gram Sabha under the Act has also been endowed with extraordinary power. The jurisdiction of Gram Sabha in Scheduled Area is all-pervasive. It can consider wide range of issues which has direct or indirect bearing on the life of the tribes. The preamble of Section 4 of PESA Act prohibits the legislature of a State of making any law under that Part which is inconsistent with any of the features laid down in the central Act. This may be viewed as the most crucial part of the Act. This Act may also be considered as unique because of the provision made in Section 5. This Section envisages that any provision of a law which is inconsistent with the provisions of PESA can only continue to be in force until amended or repealed by the state; otherwise, it will automatically expire in one year from the date on which this central Act came into effect. This time limit has already expired on 23-12-1997. So, all provisions in the laws of the concerned States and the Centre that are not in consonance with the basic features laid down in Section 4 of PESA are considered to be null and void.

➤ L.M. Singhavi Committee This was set up in 1986. It gave importance to the Gram Sabha. Once again, the Gram Sabha was viewed as the seedbed of democracy. Some of its major recommendations are: Local self-government should be constitutionally recognized. · Elections at the panchayat level should be held regularly and without delay. · Panchayati Raj judicial tribunal should be set up in every state to deal with matters related to the working of Panchayati Raj. There should be adequate financial resources to ensure effective functioning of panchayats. Participation of individuals attached to political parties should be discouraged.

➤ G.V.K. Rao Committee This Committee was set up in 1985. It was asked to look into the administrative arrangements for rural development and the role of panchayat bodies and their relationships with the administrative setup. With reference to the Panchayati Raj, we may recall the major recommendations of this committee as follows: Zilla Parishads (at district level) should be strengthened, There should be sub-committees at the district level with proportional representation, Some planning functions may be transferred to the district level, and · Elections of local bodies should be held It proposed that the Legislature of a State could by law endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government.



SR. NO	STATEMENT	YES	NO	SCORE	WEIGHTED AVERAGE
	PESA ACT	02	01		
1	Powerful law	48	02	98	1.96
2	special law	46	04	96	1.92
3	useful for tribal community	45	05	95	1.90
4	Protect the right of tribals	42	08	90	1.80
5	Barriers in the Implementation	49	01	99	1.98

Challenges in Implementation

- Lack of Awareness: Many tribal communities are unaware of their legal rights under PESA.
- Institutional Resistance: Bureaucracy and local police often find it difficult to cede power to the Gram Sabha.
- Mining Interests: Scheduled areas are often rich in minerals, leading to a direct conflict between corporate interests and tribal self-rule.

Recommendations

- ❖ Harmonization of Laws: State laws (Land Acquisition Act, Forest Act) must be amended to align strictly with PESA.
- ❖ Capacity Building: Training tribal leaders and Gram Sabha members on legal procedures and financial management.
- ❖ Digital Transparency: Documentation of Gram Sabha proceedings to prevent the forging of "consent" documents.

Conclusion

The PESA Act is not just a law; it is a tool for social justice and restorative democracy. However, its success depends on the political will of the state governments and the empowerment of the grassroots. Unless the Gram Sabha is truly recognized as the supreme



authority in tribal areas, the dream of "Tribal Self-Rule" (Gram Swaraj) will remain unfulfilled. PESA is a most powerful regulation which can play an instrumental role in recognizing the rights of the tribal population in Scheduled areas over natural resources thus transforming their quality of life. It is almost true that due to lack of political will, their rights have been disregarded strategically. Though central government has taken several measures to implement the Act in letter and spirit, lack of initiative from concerned state government is quite evident. Central government should take appropriate action to eliminate the loopholes in the central legislation immediately followed by a strong direction from political government to abide by the constitutional mandate. State government should follow the guideline issued by the central government to incorporate changes in the state Acts proposed by state level study reports, take appropriate measures to amend state laws which are in conflict with the provisions of PESA, take initiatives to enhance the capacity of government machinery and stakeholders who play vital role in actual implementation of the Act at the ground level. Civil Society Organizations who have been fighting proactively for the issue has to play strategic role in building awareness among the stakeholders at each level and organizing the politically divided tribal communities. So, a multi-pronged strategy to address the issue from different aspect is the need of the hour.

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