

Concept Note on The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996(PESA)

I. 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 24thDecember, 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 fundamental spirit of PESA Act for tribal areas under the V schedule is that rather than delegation, it devolves power and authority directly to Gram Sabha and Panchayats. Hence, it carves out a path for participatory democracy. The provisions under this act calls for all legislation in respect of the Panchayats in Schedule V areas to be in conformity with the customary law, social and religious practices and traditional management practices of the community resources. It also directs the state government to endow powers and authority to make Gram Sabhas and Panchayats function as Institutions of Local Self Governance, specifically on matters of enforcing prohibition of sale and consumption of intoxicant; ownership of minor forest produce; power to prevent alienation of land and restoration of unlawfully alienated land, management of village markets, control over money lending etc. Hence, PESA Act has been an attempt to provide dignity to the tribal community and bring them into the mainstream of development process through their self-governance.

II. Background to the Conference

The tribal people live in hilly and secluded areas, far from the mainstream society. Forest is their natural habitat and their way of environment protection is adorable. The tribal people are rich in morals, social values, cultural and linguistic practices. They have a self-sustained economy and practice self-governance. In fact, their dispute resolution mechanisms among the tribals is an example of their self-governance.

The PESA Act aims to bring the tribal people into the mainstream society through enablement of their self-governance to be an intrinsic part of their development process. This has been aimed by giving special powers to the Gram Sabha. The Act protects tribal people from money lenders, land alienation and provides them ownership on Minor Forest Produce (MFP), minor water bodies and community assets. However, the implementation of this Act has been facing challenges because the tribal communities are yet to acquire social, economic and political well-being.

As 25 Years have passed since the enactment of PESA Act, while many advancement in the livelihoods of tribal communities have been made possible from the provisions of the Act, it is observed that there are still many challenging gaps that are needed to be bridged in order to achieve the intended goals towards fulfilment of the aspirations of the tribal communities. In this backdrop, Ministry of Panchayati Raj (MoPR) in collaboration with Ministry of Tribal Affairs and NIRDPR is organizing the Conference on “25 Years of PESA Act: Status of Implementation and the way forward”.

III. Salient Features of the Act

1.1. Powers exclusive to Gram Sabha-

Every village shall have its own Gram Sabha. A village may consist of one or more habitations or hamlets comprising a community and managing its affairs in accordance with traditions and customs.

[Section 4(b) of PESA Act]

(In Part IX, all electors of Village Panchayat constitute a Gram Sabha)

- 1.2. Gram Sabha is "competent" to safeguard and preserve the-
- (a) traditions and customs of the people, and their cultural identity,*
 - (b) community resources, and*
 - (c) customary mode of dispute resolution.*

[Section 4(d) of PESA Act]

- 1.3. Gram Sabha has mandatory executive functions to-

(a) approve plans, programmes and projects for social and economic development. [Section 4(e)(i) of PESA Act]

(b) identify persons as beneficiaries under the poverty alleviation and other programmes. [Section 4(e)(ii) of PESA Act]

(c) issue a certificate of utilisation of funds by the Panchayat for the plans; programmes and projects referred to in section 4(e) of PESA Act. [Section 4(f) of PESA Act]

- 1.4. Powers exclusive to Gram Sabha/Panchayat at appropriate level-

(a) right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons. [Section 4(i) of PESA Act]

(b) Panchayat at an appropriate level is entrusted with planning and management of minor water bodies. [Section 4(j) of PESA Act]

(c) Mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease, concessions for mines and minerals. [Sections 4(k) and 4(l) of PESA Act]

- 1.5. Powers endowed to Gram Sabha and Panchayat at appropriate level to-

(a) regulate sale/consumption of intoxicants. [Section 4(m)(i) of PESA Act]

(b) ownership of minor forest produce. [Section 4(m)(ii) of PESA Act]

(c) prevent land alienation and restore alienated land. [Section 4(m)(iii) of PESA Act]

(d) manage village markets. [Section 4(m)(iv) of PESA Act]

(e) control over money lending to STs. [Section 4(m)(v) of PESA Act]

(f) control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources [Sections 4(m)(vi) and 4(m)(vii) of PESA Act]

IV. Present Status of Implementation of PESA Act

All the ten States having Fifth Schedule Areas are required to make their State Panchayati Raj Acts and concerned subject laws compliant with the provisions of PESA Act, 1996. The States have taken affirmative action in this regard and made their Panchayati Raj Acts and some of their subject laws PESA compliant.

The status of compliance of important Subject Laws with PESA, as reported by these States, is furnished in the **Table** below-

Table-1 :Compliance of important subject laws with PESA Act

States	Land acquisition	Excise	Forest produce	Mines and minerals	Agriproduce market	Money lending
Andhra Pradesh	N	N	N	N	N	N
Chhattisgarh	Y	Y	N	Y	Y	Y
Gujarat	Y	Y	Y	Y	Y	Y
Himachal Pradesh	Y	Y	Y	Y	N	N
Jharkhand	N	N	Y*	N	N	N
Madhya Pradesh	Y	Y	N	Y	Y	N
Maharashtra	Y	N	Y	Y	N	Y
Odisha	N	Y	Y	Y	N	N
Rajasthan	N	N	N	Y	N	N
Telangana	N	N	N	N	N	N

** Jharkhand Government. has adopted a resolution on 8.2.2007 conferring ownership right over Minor Forest Produce to Gram Panchayats.*

‘Y’ denotes the provision has been made PESA compliant.

‘N’ denotes action is yet to be completed.

The status of compliance in respect of compliance with various provisions of Section 4 of PESA Act 1996, as reported by the States, is furnished in the **Table** below-

Table2: Compliance of State Panchayati Raj Acts with Section 4 of PESA Act:

PESA States	Provisions under Section 4 of PESA Act 1996														
	(d) (Customary mode of conflict resolution by the Gram Sabha)	(e) (Selection of programme beneficiaries by Gram Sabha)	(f) (GP to obtain UC from Gram sabha)	(h) (Nomination by State Government of persons of ST not represented in intermediate & district PRIs)	(i) (Consultation with Gram Sabha or PRI before land acquisition and resettlement &)	(j) (Planning & management of water bodies by Gram Sabha or PRI)	(k) (Recommendation by Gram Sabha or PRI before grant of prospecting license or mining lease)	(l) (Recommendation by Gram Sabha or PRI before exploitation of minor minerals)	Section-4(m)						
									(i) (Restrict sale of intoxicant)	(ii) (Ownership of Minor Forest Produce)	(iii) (Prevent land alienation)	(iv) (Manage village markets)	(v) (Control money lending)	(vi) (Control social sector institutions & functionaries)	(vii) (Control local plans and resources including tribal sub-plans)
Andhra Pradesh	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Chhattisgarh	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Gujarat	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Himachal Pradesh	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Jharkhand	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	N	Y	Y
Madhya Pradesh	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	Y	N	Y	Y
Maharashtra	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Odisha	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Rajasthan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Telangana	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

‘Y’ denotes the provision has been made PESA compliant.

‘N’ denotes action is yet to be completed.

V. Status in Implementation of PESA Act in States

The status of implementation of PESA in the ten PESA states has been observed to be having many variations. The study on “Status of Panchayat Extension to Schedule Area Act (PESA)” in Andhra Pradesh, Gujarat, Chhattisgarh, Jharkhand and Orissa, conducted by P R Foundation (2010) has emphasized that the reasons for poor implementation of the PESA are complex, and multi-pronged.

PESA Act has specifically empowered the Gram Sabhas to approve plans, programmes and projects as well as to identify beneficiaries under poverty alleviation and other programmes and issue utilization certificates of funds incurred on plans and programmes by the panchayats. However, certain dilution of such provisions are also seen; like for example the State of Madhya Pradesh has added a rider to this provision as “Subject to the rules which the state government may make in this behalf and subject to the general or special orders as may be issued by the state government from time to time.”

PESA Act prescribes that prior consultation with the Gram Sabha or the panchayat at appropriate level, before acquiring of land for development of projects and before resettling or rehabilitating of persons affected by such projects, is mandatory. However, the Act further adds a clause of giving option to states to devolve power either to the Gram Sabha or the panchayats at “appropriate level”, which may be the lowest level or the intermediate level or the apex level. Hence many variations on this account are being noticed. In the state Acts of Andhra Pradesh and Gujarat, these powers have been delegated to Mandal Panchayat and taluka panchayat respectively and not to the Gram Sabha. The Odisha Panchayat Act has given this responsibility to the Zilla Panchayat. Himachal Pradesh and

Maharashtra Panchayat Acts have given this charge to the Gram Sabha. The Madhya Pradesh Act does not specify it in clear terms except saying that the Gram Sabha will manage natural resources including land. The Rajasthan ordinance has given this power to the Gram Sabha or Panchayati Raj institutions as may be prescribed. Hence, there is a lack of uniform pattern emerging from the provisions made by the concerned states.

PESA Act has also made provisions that planning and management of minor water bodies be handled by the panchayats at the appropriate level in the schedules areas. In other words, this function was not to be entrusted to the Gram Sabha. Andhra Pradesh panchayat act has assigned this function to the gram panchayat or Mandal Panchayat or Zila Panchayat as the case may be. Gujarat Panchayat Act assigns this task to Taluka Panchayat. Odisha Panchayat Act has given this power to the Zilla Parishad. Himachal Pradesh and Maharashtra Acts have no exact specification on this function. Madhya Pradesh state has however clearly specified that the gram panchayat would take decisions in matters relating to planning and management of the minor water bodies only after consultation with the Gram Sabha.

PESA Act also specifies that the Gram Sabha or the panchayats at appropriate level will take decision regarding grant of prospecting licence or mining lease for minor minerals in the scheduled area and grant concession for the exploitation of minor minerals by auction. Here, too, no uniform pattern has emerged across the States' Acts. Andhra Pradesh, Gujarat and Maharashtra Panchayat Acts (for granting concession) have given this power to the Gram

Panchayat whereas Himachal Pradesh has given this function to the Gram Sabha. Odisha panchayat Act has provided this power to the Zilla Parishad, whereas state of Madhya Pradesh has made no specification in this regard. Maharashtra has made provision for every panchayat, with no specification as to which tier would be assigned this function. Rajasthan has made provisions for the Gram Sabha or the Panchayats in such manner as may be prescribed.

Section 4(m) of the PESA Act prescribes that while endowing the panchayats in the scheduled area with such powers and authority as may be necessary to enable them function as institution of self-government, the state legislature shall ensure that the panchayats at the appropriate level and the Gram Sabha is endowed specifically with: (a) power to enforce prohibition or to regulate in respect of the sale and consumption of any intoxicant; (b) ownership of minor forest produce; (c) prevention of alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe; (d) management of village markets; (e) money lending to Scheduled Tribe community; and (f) exercise control over institutions and functionaries in all social sectors; control over local plans and resources for such plans including tribal sub-plans. The states have implemented these provisions in varying degrees; for example, Andhra Pradesh and Himachal Pradesh Panchayat Acts have given the power to enforce prohibition to the Gram Sabha or the gram panchayat as the case may be, while the Gujarat Panchayat Act has given this power to the intermediate tier of the Panchayati Raj system and not to the Gram Sabha. Maharashtra and Odisha Panchayat Acts have given this power to the Gram Sabha whereas Madhya Pradesh Panchayat Act does not make any mention about this.

As it can be seen that the provisions of the PESA Act are differently enabled in different states, these variations between the Central PESA Act and that of the States pose many challenges in smooth implementation. Hence, an evaluation of the efficacy of current status of implementation of PESA across all ten Scheduled states through the present Conference has become imperative.

VI. Challenges in Implementation

- a) *Lack of awareness about PESA amongst the tribal community:* Although PESA had come into existence in 1996, it is observed that the local tribal community of Fifth Schedule areas has very limited understanding of the law and powers extended to them under PESA.
- b) *Limited autonomy of Gram Sabha and panchayats at the lower level:* In many cases, it is observed that the Gram Sabhas are influenced by non-tribal individuals.
- c) *Overseeing the implementation of the Act by the functionaries who may not have proper understanding of tribal culture.* There exists a knowledge gap in understanding the tribal culture and their way of living by some of the functionaries.
- d) *Lack of institutional mechanisms and enabling ecosystem* – such as adequate capacity, proper access to information etc., – for empowering Gram Sabhas as centres of self-governance
- e) *Non-compliance or violation of provisions under PESA*
- f) *Gap in adoption of PESA in letter and spirit*
- g) *Presence of committees and forums operating parallel to the PESA Gram Sabhas:* The Gram Sabhas to be conducted under PESA, often see low turnout and participation, due to presence of parallel customary forums and other committees. The efforts towards creation of awareness and publicity for the meetings of Gram Sabha also need to be improved.

VII. Interventions by Ministry of Panchayati Raj (MoPR)

MoPR had formulated Draft Model Rules for PESA which were circulated among the PESA States in 2009.

Under Rashtriya Gram Swaraj Abhiyan (RGSA), PESA States are being assisted financially by providing:

- a) One Gram Sabha Mobiliser in each PESA Gram Panchayat/ block to ensure maximum participation of members of PRIs and its decision making
- b) One PESA coordinator in each district: A sum of Rs.10,000 for each Gram Panchayat for conducting orientation programmes / Sabhas, and
- c) A sum of Rs.10,000 for contracting the NGOs for regular hand holding.

MoPR had organized One-Day State-level workshops in the PESA States during 2014-15 to give a fillip to the implementation of PESA and improve the level of awareness on the subject among the representatives of Panchayats. The workshops aimed to bring an interface between the Government and the other stakeholders. These workshops were participated by senior officers from line departments at the State level, District Magistrates/ officials, Divisional Forest Officers, Chairpersons of Zila Parishads, Panchayat Samitis, Elected representatives of Panchayats, active members of Gram Sabha, NGOs etc.

Various Handbooks for use of Gram Panchayats/Gram Sabhas have also been brought out by the Ministry. The 'Handbook of Community Mobilisation in Fifth Scheduled Areas' was released on National Panchayati Raj Day, 24th April, 2015. The book contains basic information about the provisions of PESA, principles and methods of community mobilization and role of Gram Sabha/Community Mobilisers and PESA Coordinators.

A workshop was held on 2-3 November, 2018 at the National Institute of Rural Development(NIRD&PR), Hyderabad, Telangana for Gram Panchayat Development Plan(GPDG) Campaign with focus on PESA areas of States of Andhra Pradesh,

Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

A separate guidelines document for participatory Gram Panchayat Development Plan (GPDP) for local development in PESA Areas, was circulated to PESA States. In addition, an advisory on bonded labour and distress migration in PESA areas was also issued.

VIII. Issues for Consideration in Conference to arrive at Way Forward

- The four States namely Jharkhand, Chhattisgarh, Madhya Pradesh and Odisha have not yet framed PESA Rules. The task of framing these rules to be completed in time bound manner.
- Issues of non-conformity between the Central PESA Act and State PESA Act/ Rules to be resolved in a time bound manner. Till the time of such resolution, the stipulation in the Central Act that in case of any such conflict, the Central Act would prevail over the State Act/ Rules' contrary provisions should be enforced.
- To aid in effective functioning of Gram Sabhas as envisaged in the PESA Act, there may be need for formal notification of PESA villages by the State. Wherever such notifications have already been done, the issue may also have to be re-examined towards facilitating smooth conduct of the Gram Sabhas and maximum participation thereof.
- Setting up a dedicated cell within NIRDPR for development of academic, research and capacity building expertise towards PESA Implementation may be considered.
- PESA Gram Sabha Operational Manuals in various regional languages may got prepared through NIRDPR/ SIRDs collaboration for circulation to all the stakeholders.
- State PR Departments may consider establishment of a separate PESA section to facilitate for the special requirements of PESA Gram Sabhas. A

public helpline centre may also be considered within this section to provide real time help to the PESA beneficiaries.

- Provision of adequate administrative / financial / technical support by the State PR Departments towards facilitating PESA Gram Sabhas:
 - Creation of necessary positions of Vice President/ Secretaries for the individual Gram Sabhas and take action to fill up those positions through nomination/ elections.
 - Issuance of utilization certificate by the Gram Sabha to be made mandatory for all financial allocations and releases.
 - Panchayat finances may be further decentralised towards creation of independent accounts for each Gram Sabha with full financial autonomy for their operations, including control over the revenues generated out of giving licenses for the exploitation of the minor water bodies and minor minerals.
 - Provision of adequate logistics like the space in the Panchayat buildings towards organisation of Gram Sabha meetings.
 - Formation and efficient functioning of various sub-committees for various enabling provisions of PESA like control over minor water bodies, forests produce, mining/ mineral rights, control over intoxicants etc under the overall supervision of the Gram Sabhas.
 - Suitable resolution mechanisms may be established to harmonise between the State Government official processes in conflict with PESA Gram Sabha decisions.
 - Restoration of complete rights over Minor Forest Produce (MFPs) in the Schedule Areas to the Gram Sabhas/ tribal beneficiaries as envisaged in PESA Act by removing all impediments of contrary government notifications and also facilitating value additions in the same.
 - Mechanism for unburdening the different costs charged by Forest department officials for assisting in commercialisation of MFPs on the PESA Gram Sabhas, towards provision of full benefits to the Tribals.
