



The Journey of PESA Act

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ABSTRACT:

India has the second largest tribal population in the world. As per the 2011 census, India's tribal population constitutes 8.9 percentage of the total population (pib.gov.in)¹. There have been various tribal movements like the Santhal rebellion, Munda revolt, Ahom revolt and many more. When India attained its independence from the British raj, the Indian constitution was framed and enacted in January 1950. The framers of the constitution took note of the fact that certain communities in the country were suffering from extreme social, economic and political backwardness due to primitive agricultural practices, low infrastructure and isolation from the real world (Yojana, July 2022)². This ensured a special treatment for these communities through various laws to protect their rights and uplift them. This is a descriptive research paper that focuses on the PESA Act, 1996 and its objectives, implementation, its impact on the tribal livelihood and their problems based on secondary data. So, this research paper will help to understand the journey of PESA (Panchayats Extension to the Scheduled Areas) act and its limitations through which suitable amendments can be made to ensure effective implementation and welfare of the tribes.

Keywords: Tribal laws, PESA act

INTRODUCTION:

Traditionally the tribes enjoyed total autonomy in the governance of their affairs and their resources including the forests. But this was completely dismantled in the British rule. In order to uplift such communities a provision was made in the constitution of India in the form of reservations in education, employment and in the governing bodies as Scheduled castes (SCs) and Scheduled tribes (STs). This research paper elaborates on The Panchayat (Extension to Scheduled areas) Act, 1996.

METHODOLOGY:

This research paper is based on the tribal laws and provisions in the Indian Constitution and is based on the previous studies conducted by other researchers. It analyses the secondary data related to the tribal issues.

PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996:

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 the PESA Act or the Extension Act.

Background:

With the 73rd amendment in 1992, village level democracy became very important for passing on decision making from the central government to the lowest units in the country. Since the provisions in Part IX relating to the panchayats are not applicable in the tribal areas of the fifth schedule, the PESA Act was enacted on 24 December 1996 to enable tribal self-rule in these areas. It gives special powers to the scheduled tribal areas especially for management of natural resources. It is meant to recognize, empower and promote the economic, political and cultural way of life of the scheduled tribes.

The main rationale behind this act is to save the tribes from exploitation by their participation in governance through gram sabhas.

Objectives of the Act

"The objectives of the PESA Act are as follows:

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 to preserve the traditions and customs of tribal communities
6. To empower panchayats at the appropriate levels with specific powers conducive to tribal requirements
7. To prevent panchayats at the higher level from assuming the powers and authority of panchayats at the lower level of the gram sabha”

Provisions of the Act:

“The features (or the provisions) of the PESA Act are as follows:

1. A state legislation on the Panchayats in the Scheduled Areas shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
2. A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
3. Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
4. Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
5. Every Gram Sabha shall–
 - (i) Approve of the plans, programmes and projects for social economic development before they are taken up implementation by the Panchayat at the village level; and
 - (ii) Be responsible for the identification of beneficiaries under poverty alleviation and other programmes.
6. Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds for the above plans, programmes and projects. The power to control local plans and resources for such plans including tribal sub plans.
7. The reservation of seats in the Scheduled Areas in every Panchayat shall be in proportion to the population of the communities for whom reservation is sought to be given under Part IX of the Constitution. However, the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats. Further, all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.
8. The Gram Sabhas shall have control of the minor forest produce, minor water bodies, regulate money lending, village markets and all social sectors.
9. The state government may nominate such Scheduled Tribes which have no representation in the Panchayat at the intermediate level or the Panchayat at the district level. But such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.
10. The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas. However, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the state level.”

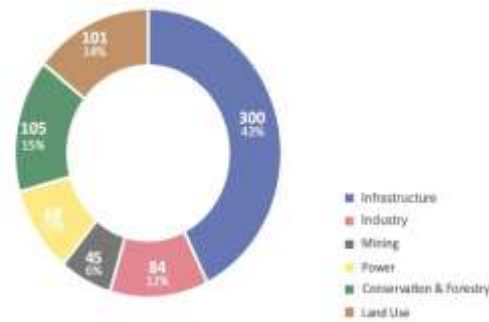
SOURCE: Indian Polity by Laxmikant³ & The Indian Constitution⁴

PROBLEMS WITH PESA:

Land conflicts still a great issue:

Of India’s 703 land conflicts 25 percentage are in tribal areas. “India has an array of laws to recognise the traditional land rights of people and to facilitate equitable sharing of land resources. But a large number of land conflicts are still jeopardising human rights of people and huge investments,” said Kumar Sambhav Shrivastava, co-founder of Land Conflict Watch.

Figure 1: The Spread of 703 Land Conflicts across Sectors



SOURCE: Locating the breach – Mapping the nature of land conflicts in India , Land conflicts watch (February 2020)⁵

Insufficient protection to tribal forest rights:

“There is no protection for forest rights of the tribes. Forest laws in India classify forests into three categories: reserve forests (which should be left untouched); protected forests (where exploitation is allowed unless specifically prohibited); and village forests (that are assigned to local communities for management and use). The ability of a tribal community to exploit a forested region for consumption would thus depend on its classification. So, for instance, even though PESA grants tribal communities the ownership of minor forest produce, the right is almost sterile unless state governments ensure that forested areas near tribal communities are denoted village forests and not reserve forests. Despite such clear federal restrictions on forest use, PESA does not provide any guidance on the manner in which the states should protect tribal rights to forestlands.”(Apoorv Kurup, 2008)⁶

Applicable only to the scheduled areas:

PESA is applicable only to those tribal areas which are mentioned as scheduled but there are a lot of tribes living outside the scheduled areas who are not covered under this legislation. So again it creates a problem of partial implementation that has worsened self-governance of tribes in areas like Jharkhand. Social audits conducted across the state shows that, development schemes are merely approved in paper but there is no discussion for decision making regarding its implementation.

Less awareness and education:

PESA can be effective based on the voice or ability of elected representatives to deliver the problems. But lack of education and awareness makes it impossible to achieve the objectives of this act.

Lack of autonomy:

Panchayats have not been given adequate responsibilities to levy and collect taxes, fees, duties or tolls. This severely limits their autonomy. Gram sabhas are the primary instrument to implement PESA, however in reality other state legislatures and extraneous forces such as forest department subordinate them, it defeats the very purpose of PESA. (socialissuesindia.wordpress.com)⁷

Act merely in paper:

The ground reality is that PESA has merely been reduced to a paper. “A [study](#) conducted by the Indian Institute of Public Administration in six districts of three states – Jharkhand, Chhattisgarh and Odisha, highlights the poor implementation of the Act. In the Khunti district, 65 percentage of people whose land was acquired said they were not even asked about it. Around 26 percentage of such people from the Gumla district of Jharkhand had similar claims.” (scroll.in)⁸. Even after 27 years of its inclusion some states like Jharkhand and Chattisgarh have not implemented it, the main reason behind this is the inefficiency of these state governments in amending local laws to get desired results.

CONCLUSION AND WAY FORWARD:

The government has to amend laws to ensure that the tribals don't lose their control over the forest and its resources. State governments must take necessary steps to implement PESA completely. Tribals must be provided education and awareness about self-governance through gram sabhas so that there can be effective redressal of tribal issues. The tribal councils must be given the autonomy to take care of the tribal issues and provide solutions. The central and state governments must ensure proper implementation of the tribal laws to protect their rights. Land conflicts have to be resolved through

implementation of Forest scheduled tribes and other traditional forest dwellers act. For effective implementation of PESA act via rules at the local level, the act should spell out who are competent authority to frame rules under the act. Additionally, the act should impose a timeline on the state governments for them to adopt PESA rules in consonance with the act.

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