

# IMPLEMENTATION OF PANCHAYATS EXTENSION OF SCHEDULE AREAS (PESA) IN INDIA AND ANDHRA PRADESH- AN OVERVIEW

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## *Abstract*

In India most of the tribes are collectively identified under Article 342 (1&2) as Scheduled Tribes and right to self determination guaranteed by Part X : The Scheduled and Tribal Areas– Article 244: Administration of Scheduled Areas and Tribal Areas. These schedules have very little impact on the ground, Tribal Advisory Council are either nonexistent in many states or are defunct and dysfunctional worse still is the process of rescheduling of tribal areas itself is not yet complete even after decades. It started in the fifties and soon the bureaucracy at the state level gave it up. Having no inclination to protect the land rights of tribals the spread of naxalites armed struggle to tribal areas due to non development in those regions compelled the ruling class leaders to initiate the some reforms measures in tribal areas. Indira Gandhi introduced the Tribal Sub-Plan in the planning process, earmarking a portion of funds for tribal development. Only to ensure their share of the Central Plan allocations, the States started the notification of tribal areas again”.

## **INTRODUCTION:**

The term ‘Scheduled Areas’ has been defined in the Indian Constitution as “such areas as the President may by order declare to be Scheduled Areas under the Central Act”. Though the Constitution has not spelt out the criteria to be followed for declaring an Area as a Scheduled Area, however, as a matter of established practice, these are preponderance of tribal population, compactness and reasonable size of the area, underdeveloped nature of the area, and marked disparity in economic standards of the people. They embody, broadly the principles followed in declaring ‘Excluded’ and ‘Partially Excluded Areas’ under the

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Government of India Act, 1935 and spelt out in Report of the Scheduled Areas and Scheduled Tribes Commission, 1961.

### **CENTRE AND THE STATES IN TRIBAL AFFAIRS:**

In exercise of the Constitutional provisions, the President after consultation with the State Governments concerned had passed the Orders called, 'the Scheduled Areas (Part A States) Order, 1950 and the Scheduled Areas (Part B States) Order 1950 which set out the Scheduled Areas in the States. Further, by an Order, namely the Madras Scheduled Areas (Cesser) Order, 1951 and the Andhra Scheduled Areas (Cesser) Order, 1955 certain Areas of the then East Godavari and Visakhapatnam districts were de-Scheduled. At the time of formulating and adopting the strategy of Tribal Sub-Plan (TSP) for socio-economic development of Scheduled tribes during Fifth Five Year Plan I (1974-79), certain areas besides the then existing Scheduled Areas, were also found to be having preponderance of tribal population.

### **PESA IN INDIA:**

The second Administrative reforms Commission too has stressed the effective implementation of PESA 1996. The Union and State legislations that impinge on the provision of PESA should be immediately modified so as to bring them in conformity with the Act.

Moreover international organizations too had stressed the rights to self determination of these groups. "Indigenous people around the world have sought the recognition of their identities, their ways of life and their traditional lands, territories and natural resources: yet throughout history their rights have been violated.

Hence PESA seems to be the best policy to fulfill these concerns, "There is a case for creating a special arrangement whereby in the first two years of Twelfth Plan funds can be unconditionally released for all these districts to facilitate the speedy implementation of PESA".

### **CURRENT STATUS OF THE PESA:**

Ministry of Rural Development is the nodal agency for overseeing the implementation. The Ministry of Tribal Affairs constituted in 1999 is yet to be mandated with the responsibility of also monitoring the implementation of PESA.

However, MoPR has been active in monitoring PESA as part of its general mandate on Panchayat raj (Panchayat Raj (Extension To Scheduled Areas) Act of 1996: Policy Brief, UNDP, 2012:29).

Reviewing the implementation of PESA, a Planning Commission Working Group Report categorically states that:

“All States have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts. Certain gaps continue to exist. Most States are also yet to amend the subject laws and rules, such as those relating to money lending, forest, mining and excise to harmonise with PESA. Though the provisions in such laws are legally invalid after December 12, 1997, they continue to be followed by departments and their functionaries for want of clear instructions and guidelines.

Powers statutorily devolved upon the Gram Sabha and Panchayats are not matched by the concomitant transfer of funds and functionaries resulting in the non-exercise of such powers. States have, over the years, been repeatedly urged to expedite this process, but progress has been slow and often, only symbolic, with no real intention to operationalise the provisions in spirit”.

#### **MINISTRY OF PANCHAYAT RAJ ADDS THAT:**

The Government of India, Ministry of Panchayati Raj, in its office memorandum dated 2nd December 2013 observed that:- Six out of nine states have not framed appropriate rules under PESA. Chhattisgarh State is in process of framing the Model PESA Rules for the State. Initial consultation has been done between Directorate of Panchayat and the legal cell. Further consultation is in process.

State Subject laws relating to mines and minerals, forests, land acquisition etc are not PESA compliant. To prevent alienation of tribal land in the Scheduled areas, adequate provisions have been made in the Land Revenue Code in Chhattisgarh (Ashok Kumar Jaiswal, 2014:7626).

Mines and Minerals (Development and Regulation) Act 1957, the Indian Forest Act 1927, the Forest Conservation Act 1980, and the Indian Registration Act. National policies such as the National Water Policy, 2002, National Minerals Policy, 2003, National Forest Policy, 1988, Wildlife Conservation Strategy, 2002 and National Draft Environment Policy, 2004 would also require harmonisation with PESA” (The Seventh Report of the Second Administrative Reforms Commission, 2008:105 and 210).

The Report of the Expert group of the Planning Commission on 'Development Challenges in Extremist Affected Areas' (2008)<sup>48</sup> observed that: "The areas in Central India where unrest is prevailing covers several States (like Andhra Pradesh, Orissa, Chhattisgarh, Madhya Pradesh, Jharkhand and part of Maharashtra) are minimally administered. State interventions both for development and for law and order had been fairly low. In fact there is a kind of vacuum of administration in these areas which is being exploited by the armed movement, giving some illusory protection and justice to the local population." The Report goes on to recommend:

"In view of the fact that governance in the Scheduled Areas with regard to many a vital aspect of tribal life is without any authority of law, the concerned Governors should issue a notification under Para 5(1) of the Fifth Schedule (to be referred hereafter in brief 'Para 5(1) Notification') to the effect that 'Notwithstanding anything in the Constitution, the Panchayat Act or relevant Acts of the Parliament or the Legislature of the State for the time being in force, the provisions of PESA shall prevail.' This is necessary to ensure that there is no ambivalence or contradictions in the frame of governance at the village level as a result of diverse legal provisions made from time to time and extended to the Scheduled Areas in routine" (Report of the Expert group constituted by the Planning Commission on *Development Challenges in Extremist Affected Areas*, 2008, p.80).

Since the laws do not automatically cover the scheduled areas, the PESA Act was in acted on 24 December 1996 to enable Tribal Self Rule in these areas. The Act extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule Areas. Most of the North eastern states under Sixth Schedule Areas (where autonomous councils exist) are not covered by PESA, as these states have their own Autonomous councils for governance. The nine states with Fifth Schedule areas are:

1. Andhra Pradesh
2. Jharkhand
3. Chhattisgarh
4. Himachal Pradesh
5. Madhya Pradesh
6. Gujarat

7. Maharashtra

8. Orissa

9. Rajasthan (Panchayat (Extension to Scheduled Areas) Act, 1996:8).

**TABLE-1**  
**FIFTH SCHEDULE AREAS**

STATE	AREAS
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some Mandals are scheduled Mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour subtehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharuch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only) Rajasthan Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Source: Prasad R.R. and V. Annamalai, 2013:87

PESA lies down that every village will have a Gram Sabha which will be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution. PESA provides that in Panchayats in 5th Schedule areas, there must be a minimum of fifty percent reservation of the total number of seats for the Scheduled Tribes. All Chairpersons' seats in Panchayats are also to be reserved for the Scheduled Tribes. Since the PESA extends

the constitutional provisions of Panchayats to Fifth Schedule areas, it must be considered as an indivisible part of the Constitution (Fifteenth Anniversary Charter on Panchayati Raj, 2008:14).

## ANDHRA PRADESH

Andhra Pradesh bounded by Madhya Pradesh and Orissa in the north, the Bay of Bengal in the east, Tamil Nadu and Karnataka in the south and Maharashtra in the west. Andhra Pradesh is the third largest state in India and it forms the major link between the north and the south of India. It is the biggest and most populous state in the south of India. There are three main regions in Andhra Pradesh - (1) Northern Circars or coastal Andhra comprising Srikakulam, Visakhapatnam, East Godavari, West Godavari, Krishna, Guntur, Ongole and Nellore districts; (2) Rayalaseema or Ceded districts comprising Kurnool, Cuddapah, Chittoor and Anantapur districts; and (3) Telangana comprising Khammam, Nalgonda, Warangal, Karimnagar, Medak, Nizamabad, Aaidilabad, Mahbubnagar and Hyderabad districts. The Circars or Coastal districts are well developed and enjoy a greater degree of affluence than the other two regions; Rayalaseema is close to the coastal districts and here rainfall is less than in the coastal districts and drought conditions prevail sometimes, and the Telangana region is of the former princely state of Nizam's Hyderabad, which is close to Maharashtra's Marathwada region and some parts of Karnataka. The state is dotted with hill ranges from the north to the south, running erratically down the middle of the country dividing it into western and eastern or coastal Andhra. These hills form integral geographical entities of Andhra life and history. In the north, there are Simhachalam and Annavaram hills, in the middle country there are the Srisailam hill ranges and in the south are the Tirumalai-Tirupati hills (Planning Commission, 2000:62).

PESA legally recognizes the right of tribal communities to govern themselves through their own systems of self-government and also acknowledges their traditional rights over natural resources. In pursuance of this objective, PESA empowers Gram Sabhas (village assemblies) to play a key role in approving development plans, controlling all social sectors – including the processes and personnel who implement policies, exercising control over minor (non-timber) forest resources, minor water bodies and

minor minerals, managing local markets, preventing land alienation and regulating intoxicants among other things (Enviro Legal Defence Firm, Draft Report, Andhra Pradesh, 2011:3).

*As per Rule 4(ii) A.P. PESA Rules, 2011*, the Sarpanch of a Gram Sabha shall be the President of the Gram Sabha. The Gram Sabha shall elect a Vice-President and Secretary. The rule 4(iii) further provides that the meeting convened shall be presided over by the Sarpanch. The Vice- President and Secretary are to be elected amongst the members of the village by show of hands; they will be elected for a period of 5 yrs. The Rules also elaborate the procedure for conduct of business by the Gram Sabha.

However, in our view, it is important to give greater autonomy to the Gram Sabha in managing its affairs and in taking decisions regarding the access and use of its resources, if the Sarpanch of the Gram Panchayat is made the head of the Gram Sabha there is a risk that Gram Sabha will become a body of the Gram Panchayat and will not be able to function independently as envisaged in PESA. Therefore, it should be given the power to select its own head from amongst its members, who may or may not be the Sarpanch of the Gram Panchayat. Further, every Gram Sabha should elect its own head, rather than one person presiding over several Gram Sabha meetings (Enviro Legal Defence Firm, Draft Report, Andhra Pradesh, 2011:5-7).

## CONCLUSION:

Despite these, the response from the States and the Centre are inadequate. Most States have not framed rules for implementation of PESA provisions in the states so far.<sup>57</sup> Some recent developments include framing of rules in Andhra Pradesh and Himachal Pradesh, and preparation of training resources in Madhya Pradesh, Andhra Pradesh and Chhattisgarh. The States are reluctant to amend Panchayat and subject laws as per PESA. Many of the issues, such as control of Gram Sabhas over Minor Forest Produce, consultation before land acquisition, right of Gram Sabha to preserve community resources etc. are extremely touchy. Internal conflicts between the line departments such as Forest, Mining, Excise etc and

State Panchayati Raj departments are inevitable. The important capacity building of Gram Sabhas and Panchayats has not been forthcoming (Panchayat Raj (Extension To Scheduled Areas) Act of 1996).

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