



Schedule Areas and Self-Governance: A Reality of Panchayati Raj Extension to Schedule Areas (PESA) Act, 1996

¹Ehtesham Akhter ²Dr. Qurratul Aein Ali

Department of Social Work, Aligarh Muslim University, Aligarh, India

Abstract: The term scheduled areas has yet to be spelled out with absolute clarity as it is not logically defined in the constitution of India. It has been rather expressed as —those areas which the president of India by the order of his/her authority may proclaim as scheduled areas and regulated under the central Act.

The Panchayati Raj ministry came up with some crucial initiatives between 2nd oct 2009 to 2nd oct 2010 and indicated this period as “year of Gram Sabha”. Writing about the failure and poor implementation of PESA, the secretary of MoPR lambasted all the PESA states. In accordance with the Left-Wing extremism rise in these states, and how they have been trying to deviate the locals, thwarting them to participate in the democratic process of the country. The tribal community constitute around nine percent of India’s population (**Ministry of Tribal Affairs Govt. of India**). Among the various legislative enactments provided by the state, the PESA Act 1996 is considered the most potent law supporting the community at large. States in particular Jharkhand, Odisha, Chhattisgarh, Madhya Pradesh and Odisha have not yet mapped out the framework of the PESA rules. However, major concern is that the situation remains grim even after formulation of these rules in some states. Some states managed their rules but had poor outcomes when in it came to its implementation.

This paper delves into the happenings and highlights the reality, issues and concerns around the PESA Act of 1996 with the help of various studies, research articles, books, journals and columns. this research paper is based on secondary sources. A combination of research design of qualitative content analysis (QCA) and narrative analysis has been used by the researcher in this.

Keywords: Self- Government, Schedule-V Areas, PESA Act

I. INTRODUCTION

“Nehru was captivated by the spontaneity of tribal culture and their monumental capacity of joy and their heroism in spite of their benightedness, and ignorance. In Nehru’s view, the process of modernization and technological advancement must not be taken as forcing a sudden break with the rich tribal antiquities but help them build upon it and grow by a natural process of evolution.”

Tribal communities need special assistance for development and so governance. The constitution of India commands protection to scheduled tribes of their identity and rights through various of its provisions as contained in Articles 15,16, 19(5), 23, 29, 46, 164, 343(M), 243(ZC), 244 and also in 275, 330, 332, 334, 335, 338-A, 339, 342,366(25) besides the fifth and sixth Schedules appended to the Constitution. PESA contains in itself the ethos and mandates of two remarkable constitutional provisions i.e. articles 243 and 244. (**Report on PESA by Regional Centre for Development Cooperation, Odisha**)

Government of India has defined certain schedules areas on the basis of their especial characteristics like-

- They are totally dependent upon water, Forest and land (Jal, Jungle and Jameen) these are their identity and livelihood sources.
- They are basically residing in far rural areas and they are basically worship nature.

- These areas are rich in natural resources, cultural traditions and a preponderance of the tribal population.
- These areas are defined by the fifth schedule of the constitution on the basis of their predominant population and their specific culture which are strongly connected with nature.

Panchayati Raj

The term self-governance or Panchayati Raj refers the system of local self-government of villages in rural India as opposed to urban and suburban municipalities. The Panchayati Raj Act envisaged the Gram Sabha to be the key to self-governance, the space for direct democracy to manifest, to discuss, criticise, approve or reject the proposals of the Gram Panchayat as well as assessing its performance. This system has been set up in all Indian states by an Act of the State legislature to invigorate the democracy at the grass root level. The rural development has been entrusted with the help of local government or with the help of local participants which is also pronounced as Bottom-up approach of community development. The self-governance was constitutionalized in 1992 through the 73rd Constitutional Amendment act, although this act in a realistic fashion has provided a practical embodiment to Article 40 of the constitution which states, “The State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self- government.” (Ministry of Panchayati Raj, Govt. of India). The Act gives a constitutional status to the Panchayati Raj Institution, before this Act of 1992 Article 40 comes under DPSP (Directive principles of state policy) which is not justiciable part of the constitution, but this Act brought them under the ambit of the justiciable part of the constitution which means that the state governments are under constitutional obligation to adopt the Panchayati Raj system in accordance with the provisions of this Act.(Regional Centre for Development Cooperation). The provisions of this Act come under Part IX of the Constitution and are not applicable to those areas which are under the Fifth Schedule areas or Tribal areas of the different States. (Lakshmikanth, M.).

PESA Act 1996

The provisions of this Act are extended by the parliament with some modifications and exceptions, if any, are specified in the PESA Act of 1996 i.e., Panchayats (Extensions to the Scheduled Areas) Act 1996. After the enactment of this act, there were ten states which had fifth scheduled areas till 2013 viz;

Andhra Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana, Chhattisgarh, Gujarat, Himachal Pradesh. (**Ministry of Panchayati Raj, Govt. of India**)

All these states have amended the Panchayati Raj Acts and have enacted the PESA Act of 1996. There are some specific objectives behind this extended Panchayati Raj Act.

- With few amendments, to expand the provisions of Part IX of the Constitution pertaining to Panchayats to Scheduled Areas.
- To integrate tribal territories into the mainstream by providing self-rule to the majority of the tribal population.
- To strengthen participatory democracy in village governance and to make the Gram Sabha the centrepiece of all initiatives.
- Developing a robust administrative framework in line with established procedures.
- With the participation of the indigenous group, to conserve and protect tribal communities' customs and traditions.
- To provide tribal local representatives with relevant authorities commensurate to tribal interests at appropriate levels.
- To prevent Panchayats at the higher levels of the Gram-Sabha from assuming the rights and authority of Panchayats at the lower levels.

The main purpose of this PESA Act is to grant local governments in the schedule areas jurisdiction over their customary laws, socio-religious practises, and traditional community resource management. It also means ensuring that every Gram Sabha in these areas is capable of upholding and preserving its people's traditions and customs, their cultural identity, community resources, and the customary mode of dispute resolution with the intervention of their own community representatives, all without external interference.

This act came into being as a result of a committee formed by Dilip Singh Bhuria's recommendation for a law that would promote self-governance and autonomy in Schedule-V territories. The Bhuria committee, citing the tribals' decades of dispossession and exploitation as a consequence of their "simplicity and ignorance," suggested the creation of such a law. The draught model regulations were drafted in 2009 under the Act and distributed to all schedule-v areas in order to build state-specific rules (**A Report on the Functioning of PESA in Odisha, by National Institute for Development Innovation BHUBANESWAR 1st released: 31st December 2012**). Despite the fact that the Bhuria committee recommended this Act as a priority, only seven (7) states out of ten have notified their state PESA rules, namely

Andhra Pradesh,

Telangana,

Chhattisgarh,

Himachal Pradesh,

Maharashtra, and

Gujarat.

The remaining states pay no attention to this Act or can weigh the measure of its necessity. As a result, despite the act's brilliance and urgent requirement for implementation on the ground, the act remains theoretical to this day. The concept of developing scheduled regions through local representatives is still a work in progress.

Review of Literature

In India the tribal communities face a plethora of hurdles regarding social justice, although they were among the first who resisted the British colonial occupation, way before the struggle of Indian independence started. The Indian government retained the same laws even after the independence and continued the colonial policies over tribal communities even after they had left. Activism and agitations led by the likes of Indian People's Movement, the National Front for Tribal Self Rule, Adivasi Sangamam and the Indigenous and Tribal People's Initiative managed to change the colonial attitudes and policies by the government.

The Constitution's Fifth Schedule (Clause 3) states that the Governor of any state with Scheduled Areas must report annually or whenever the President requests it to keep the Union Government informed of the administration in Scheduled Areas. The Union Government offers directives to the respective State Governments based on this Report for improved administration of the Scheduled Areas. (**A.K. Monditoka, Decentralized Governance in Tribal India3, pp. 9-10.**)

According to **Bijoy (2012)** A non-profit organization in Delhi mention that there are 167 Urban local bodies in Schedule V according to the 1991 Census which is increasing with the year. Madhya Pradesh and Chhattisgarh have upgraded 8 and 26 tribal rural areas into municipalities respectively between 2007 to 2009. Most of these areas which have been upgraded are having the huge land with the proposals for enormous industries.

Mathew (1994:34) summarises that "during the ancient period, the Panchayats were characterized as a pivot of administration, the nucleus of social life, an inevitable economic force and above all a cornerstone of social solidarity".

Following the British invasion of India in 1803 and the establishment of British administration in Odisha, a new era in the functioning of traditional village self-governance began. The deterioration of the state's conventional local self-governance system marked the beginning of this age. The Scheduled regions of

Odisha were protected under the provision of the Government of India Act, 1935, as "partially excluded areas" through this whole period of British control. Apart from the Government of India Act of 1935, the Government of India Acts of 1919 (Montague-Chelmsford reforms) and 1929 were adopted to provide local governments in the state more powers.

The Mungekar Committee (2009) pointed out that: "The most sensitive aspect of tribal life is self-governance. Even the British were forced to recognise and reconcile themselves to this fact. That is why they resorted to the creation of 'excluded areas' through the Government of India Act, 1919. Later, however, the British succeeded in penetrating these areas also surreptitiously by entering into some agreements with them and extending the British-made laws to these areas. These areas were then called the 'Partially excluded areas'. In 1950, with the adoption of the Constitution, all laws of the Centre and concerned States got extended to the 'Scheduled Areas' (Partially Excluded Areas) in routine. This was a qualitative change in the legal regime in the tribal areas which happened after India attained Independence from British yolk. There was no place in the new Indian legal regime for the tribal community and the system of self-governance according its customs and traditions."

The **Mungekar Committee (2009)** observed that "Administrators and law makers forgot that the tribal people had a strong functioning system of self-governance. This was so notwithstanding its non-recognition under the formal system. This omission has had adverse and disastrous consequences in some cases. The community was greatly handicapped in facing the new situation that had resulted in serious unrest throughout tribal India."

Shirsath (2014) mentions that, In Jharkhand, according to the Indian Constitution, 50% of the quota for fifth scheduled Panchayats has been made, however only around half of the tribal are aware of this policy. There is no discernible difference in poverty, illiteracy, or malnutrition in these places. Tribal who represent their communities in Panchayati Raj do not have access to information about government programmes that benefit them.

According to **Shri Sanatan Bisi** (Odisha), in some states, the funds allocated for the tribal sub-plan are being siphoned off and are not being spent properly. The responsible ministry is also being requested by Shri Bisi to ensure equal representation of tribals in the electoral constituencies as guaranteed by the constitution.

Pundit Jawaharlal Nehru the first Prime Minister of India had proposed that-

- Tribal rights in land and forest should be respected
- Tribal communities should not be over-managed with a plethora of projects, and tribal teams should be trained in administration and development tasks.

Methodology

The researcher in this paper is trying to analyse the different available research papers, articles, books and different journals which are related to the PESA Act, 1996. This means that secondary material is analysed using a combined research design of Qualitative Content Analysis (QCA) and Narrative Analysis. which are provided by other academicians/researchers and writers and those available on public domain. This paper is totally based on the secondary data due to COVID-19 pandemic as it was not possible to carry-out primary data collection. The author is of the view that primary qualitative content analysis will prove to be an appropriate research method for the research.

In this paper the researcher will try to analyse the different state policies and the role of central government to implement the PESA Act, 1996. The researcher also attempts to dispel the myth apropos of the PESA Act, 1996.

Implementation of PESA in ODISHA

The State of Odisha where exists a large number of schedule areas population have not formulated the PESA rules, yet. The state governs their Gram Sabha by their own set of rules making the PESA Act null and void. There is no serious intervention by the state to implement the act on the ground.

The Supreme Court of India, citing the PESA, ordered the Odisha government to obtain permission from Gram Sabha for Bauxite mining in the Kalahandi and Rayagada districts of Odisha in a landmark case in 2013. Local forest residents were questioned if bauxite mining would have an impact on their religious and

cultural rights, and they chose against it in the Niyamgiri hills, resulting in the cancellation of a massive project. This crucial case is seen as a watershed moment that demonstrates the Gram Sabha's true power in scheduled regions, but it is also one of PESA's rare triumphs in that it highlights the Act's capabilities. Experts, however, contend that the law has not lived up to its full promise and has had little impact on the ground. The desired benefits will not be attained unless PESA rules are adequately formulated and executed on the ground.

Implementation of PESA in GUJARAT

One of the states among ten states which come under the Schedule-V areas, the PESA Act remained a dead letter in Gujarat because the PESA Act used the general Panchayati Raj Act to manage the fifth schedule areas. Surat, Bharuch, Dang Valsad, Panchmahal, Vadodra, and Sabarkanta were the first to implement it, accounting for 14.8 percent of the state's tribal population. Despite the fact that the Gujarat government issued guidelines to implement the Act in January 2017, but in reality, these Schedule-V areas are being governed by the PRI Act till now. For this researcher studied a report online on news portal 'The Wire' which was published on August 4th, 2018. This report sheds light on the plight of PESA in Gujarat. It asserts that on June 22nd, the resident of Bilmad village in Dang district gathered to organise the first Gram Sabha under the PESA Act, 1996. However, the Talati (Panchayat Secretary) delivered a notification from the Gram Panchayat to the locals two hours before the meeting was set to begin. "The Gram Sabha could not be held since it was not organised in accordance with the Gujarat Panchayati Raj Act, 1993," the panchayat Secretary noted in the notice. According to the Gram Sabha's chosen chair, there was no reference of the PESA Act, 1996 anywhere in the notice. It demonstrates that, while the Gujarat government drafted guidelines to apply the Act in January 2017, the Act is still a phantom on the ground.

Due to an over-reliance on the Gujarat Panchayat Act of 1993, various issues with administering the law under the PESA Act of 1996 have arisen. The Gujarat Panchayat Act, 1993, also goes against the spirit of the PESA Act, 1996, because the Gujarat PESA rules are a carbon copy of the Gujarat Panchayati Raj Act, 1993, which makes the Sarpanch and Secretary of the Gram Panchayat responsible for organising Gram Sabha meetings, which is in direct conflict with the PESA Act, 1996's crux and ethos.

The Gram Sabha was given the power to decide on land acquisition, relocation, and rehabilitation of displaced people under the PESA Act. It was also expected to develop and manage small water bodies, as well as provide recommendations on mine and mineral licences and leases. It also gets ownership of minor forest products and a variety of other things. The inadequate implementation of the Act is highlighted by a research undertaken by the IIPA (Indian Institute of Public Administration) in six districts across three states: Jharkhand, Chhattisgarh, and Odisha.

Implementation of PESA in JHARKHAND

The PESA Act is thought to be the cornerstone of Indian tribal legislation. In Jharkhand, 16 of the 24 districts are subject to the provisions of the PESA Act, 1996. In Jharkhand's Schedule V territory, there are around 2,071 Gram Panchayats in 135 blocks spread over 16 districts. There are 32 different tribes in the state, with nine of them being highly vulnerable. The primary tribes of Jharkhand include the Santhal, 19.6% Oraon, 14.8 percent Munda, and 10.5 percent Ho. Despite the fact that the state was founded on Adivasi identity, the effective involvement of Adivasis in Gram Panchayats under the PESA Act has not been commensurate.

Following the collapse of the Adivasi governance system due to Colonial administrative systems and later elected parliamentary democracy after independence, the PESA Act, which should have been very appropriate to uphold the traditional decision-making process, has yet to be fully implemented in its true spirit. Surprisingly, only 7 of the 22 stipulations of PESA were implemented in Jharkhand, with the remaining 15 being substituted by basic administrative standards of the Panchayats system for non-scheduled areas. Instead of adopting the PESA Act, 1996, which empowers the elected Gram Sabha and gives them more clear and defined authorities, the government of Jharkhand empowers ad hoc Gram-Vikas Samitis. According to Stan Swamy, a social activist, the Jharkhand government has announced that a 'Adivasi Gram Vikas Samiti' will be established in all of Jharkhand's 32,000 villages in the name of village development, despite the fact that everyone knows that the government is using this ad hoc Samiti to grab more and more Adivasi land. 65 percent of individuals whose land was seized in Jharkhand's Khunti district stated they were never asked about it, while about 26% of those in Jharkhand's Gumla district claimed the same.

According to **Ananth and Kalaivanan (2017)**, the PESA Act failed to fulfil its true goal in Jharkhand's Scheduled Areas due to a lack of clarity, legal infirmity, bureaucratic apathy, lack of political will, and resistance to change in the power structure. As a result, we can claim that PESA in Jharkhand is only partially implemented, and as a result, the state of self-governance in Adivasi communities has not realised its full potential after 25 years of implementation.

PESA Implementation in CHHATTISGARH

According to a study of daily e- Hindi portal MONGABAY on 23rd Feb 2021 central government acquired 1,760 acres of land in Madanpur area of Korba district of Chhattisgarh which is a storage of 22.6 crore tonne of Coals and comes under the schedule V area, but the central government acquired this land on the basis of Coal Bearing Act,1957 instead of PESA Act, 1996 which restrict the interference of state and central government without the consent of Gram Sabha. Although the state secretary of Mines objected this decision of central government through a letter written to the government but the central government didn't pay any heed to his objection at all. Villagers of Madanpur were of the view that those areas come under the schedule V areas and governed by the PESA Act,1996 but the government disregarded it and all the villagers unanimously agreed that the central and state government both were equally responsible for not implementing the PESA Act, and they also blamed the government of technical forgery against this Act. An interesting notion emanates here is that the state government is trying to oppose the central government's decision not on the basis of PESA Act, 1996. The Case of PARSA coal block is on pending in High Court on the basis of the same Act. So, the people of Madanpur also wanted to do a paidal march of 270 km from Madanpur to Raipur the capital of Chhattisgarh to stop or for the cancellation of allotment of this coal block to Andhra Pradesh government.

Reality of PESA Act,1996 and why it Looks like a MYTH?

This Act was passed by the parliament in 1996 on the recommendation of Dilip Singh Bhuria committee. Even after 25 years of its completion, the ground reality of this Act related to effective implementation on the ground is almost inadequate. It has been ignored by every state government and the central government doesn't seem very keen to implement it. Due to all these reasons, a social work activist and a member of Chhattisgarh Bachao Aandolan, Alok Shukla suspects that most of the state government and central government remains silent regarding the Gram Sabha, PESA Act, Land Acquisition Act, and Forest Rights Act because strengthening and validating these laws will allow the state government to take legal action against those government project like allocation of coal block in schedule areas without the consent of Gram Sabha or bypassing the PESA Act,1996 and adopting the old laws which favours the government and other private players like Coal Bearing Act, 1957.

An interesting fact about the myth of the PESA Act, 1996 is that there is a case of Premnagar village of Surajpur district of Chhattisgarh, an area of premnagar which comes under Fifth schedule area and where PESA Act is applicable. On June 4, 2005 the Indian Fertilizer cooperative limited (IFFCO) and the government of Chhattisgarh announced the setting of a 1,320 MW power plant in that area but the Gram Sabha opposed the setting up of power plant in this area a specially protected Pando tribal. One after other about 13 Gram Sabha were held and each time a resolution was passed against the project in the Gram Sabha. After these unsuccessful attempts of wining the support of Gram Sabha, the state government tricked them in December 2009, the state government upset with Gram Panchayat, made Premnagar a Nagar Panchayat because in Nagar Panchayat the PESA Act, 1996 doesn't apply. In this way the state government cleared the way for the power plant in that protected area even after the opposition of the tribal. This is not a singular case of legal fraud by the government. Till now almost 27 Gram Panchayats have been made Nagar Panchayats by the government in last few years in Chhattisgarh only. The honesty of the Government to implement this act properly on the ground can be viewed and understood by the approach, when MESA Municipalities (Extension to the Schedule Areas) Bill 2001 was tabled before parliament in 2001. With the objective of ensuring urbanisation in Schedule Areas and not to impose an alien governance structure upon tribal communities, and to provide the space for traditional mechanisms of self-management and community decision-making to continue through the transition from a rural to an urban area, this very much favourable Bill has been forgotten and put off.

Conclusion:

There is a great deal of laws made by the Parliament for the protection of Schedule V areas, identities and cultures like Forest Rights Act, Land acquisition Act and many others which are mainly for the protection of the tribal community but, the PESA Act,1996 is all encompassing. It gives the power to the local bodies like Gram Sabha to make their own decision related to their culture, identity, and minor forest rights. After 25 years of implementation of the Act, it is actually neither implemented by the state government properly nor they frame proper rules related to the Act. Some states like Gujarat, Odisha and Jharkhand implement this Act only on paper and actually they govern the Gram Sabha by the PRI Act,1992. By and large, in most states the PESA Act,1996 looks like a myth and the population of the Schedule V areas look towards the state government for proper implementation. In some cases, the people of these areas approached the Supreme Court against the government decision, but the government knowingly bypass the PESA Act with the help of some old dated laws like Coal Bearing Act, 1957 to help the corporates and businessmen and allocated the land and different minerals resources to them without taking the consent of Gram Sabha.

So, finally as a researcher we can say that the idea of local governance to the schedule areas through the PESA Act, 1996 looks like a hoax till now and for the tribal community it looks like a myth instead of reality.

References

- Lakshmikanth, M. (2015). Indian Polity (4th edition). Mc Graw Hill Education (India) Private Limited.
- Gupta, Bhuvanesh. (2012). Panchayati Raj Reforms in India. Published by Mohit Books International.
- Jawaharlal, Nehru. 'The Right Approach to Tribal People', Indian Journal of Social Work, vol. XIV, 1953-4, app. 231-5.
- Report of the Scheduled Areas and Scheduled Tribes Commission 1960-61 (chairman U.N Dhebar), New Delhi, Manager of Publications, Vols. I and II, 1961.
- Sonavane, Nikita and Gandhi, Tanay. (2018). 'The myth of self-governance in scheduled areas needs to be dispelled. The wire e-platform report on Aug 04, 2018. Available at <http://thewire.in> . Accessed: 16/06/2021 01:41PM
- Pandey, Kundan. (2021). 'PESA: The wait for reforms on the ground continues even after 25 years'. Mongabay e-platform report of 04th March, 2021. Available at <http://India.mongabay.com> . Accessed: 17/06/2021 04:35PM
- Putul, Alok Prakash. 'Chhattisgarh and Coal Mining: Questions raised again on ignoring PESA Law, government and villagers face to face'. Mongabay Hindi e-portal report published on 23rd Feb, 2021. Available at <http://hindi.mongabay.com> . Accessed: 17/06/2021 05:00PM
- Land and governance under the Fifth Schedule: An overview of the Law, Government of India, Ministry of Tribal Affairs.
- Bijoy, C.R. (2012). 'Panchayati Raj (Extension to Scheduled Areas) Act of 1996: Policy Brief. U.N.D.P Policy Brief on PESA.
- A report on 'Status of Panchayat Extension to Scheduled Areas (PESA) Act, 1996 in the state of Andhra Pradesh, Odisha, Jharkhand, Gujarat, and Chhattisgarh. Submitted to Planning Commission of India by P R Memorial Foundation.
- Rath, Bikash. (2013). A report on the function of PESA in Odisha. Published on 5th Jan 2013.
- Bhaskar, Prem. Ghosh, Parijat. and Chaudhry, Dibyendu. (2021) 'Collapse of Adivasi self-governance system in Jharkhand: Need to implement PESA in letter and spirit'. DownToEarth e-platform news portal published on 03 August 2021. Available at <http://www.downtoearth.org.in> Accessed: 08/10/2021
- Stan, Swamy. (2018) 'How PESA, An Act of Parliament is Being Subverted in Jharkhand'. A Column of NEWSCLICK e Portal published on 10 Feb 2018. Available at <http://www.newsclick.in> Accessed: 12/10/2021
- Patnaik, Karunakar (2011), Article on 'Gram Sabhas in Scheduled V Areas: An Orissa Perspective, (The Grassroots Governance Journal, Vol. IX No-2 July December 2011 Published by Academy of Grassroots Studies and Research of India, Tirupati, Andhra Pradesh, ISSN-0973-0257)
- Damle, Suvarna, Article on 'A Study of Contribution of Tribal Parliamentarians for Strengthening Panchayats (Extension to Scheduled Areas) Act (PESA)'