

Objective of PESA 1996

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Bhuria Committee

Narishma Rao government appointed a committee headed by Mr. Dileep Singh Bhuria, MP, in June 1994, to work out the details as to how structures like Panchayati Raj Institutions can take shape in Tribal Areas and Scheduled Areas and to define their powers. The Committee submitted its report in January 1995.

The Bhuria Committee recommended a three-tier structure of self-governance in the tribal areas:

1. Gram Sabha - Every “habitation community” to have a Gram Sabha which will **exercise command over natural resources, resolve disputes, and manage institutions under it like schools and cooperatives.**
2. Gram Panchayat - Elected body of representatives of each Gram Sabha, also to function as an appellate authority for unresolved disputes at lower level; and
3. A block or taluka level body as the next higher level.

Section 2 of PESA- “Scheduled Areas” means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

Section 3 of PESA- **The provision of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.**

- a State legislation on the Panchayats that **may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.**
- 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.
- 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.
- 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.**

Powers of Gram Sabha: Gram Sabha has mandatory executive functions to-

- (a) Approve plans, programmes and projects for social and economic development.
- (b) Identify persons as beneficiaries under the poverty alleviation and other programmes.
- (c) Issue a certificate of utilisation of funds by the Panchayat for the plans;

- **Gram Sabha has right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons.**
- Panchayat at an appropriate level is entrusted with planning and management of minor water bodies.
- Mandatory recommendations by Gram Sabha or Panchayat at appropriate level prior to grant of prospecting licenses, mining leases, concessions for minor minerals.

Other Powers Of Gram Sabha:

- a) regulate sale/consumption of intoxicants.
- b) ownership of minor forest produce.
- c) prevent land alienation and restore alienated land.
- d) manage village markets.
- e) control over money lending to STs.
- f) control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources.

Limitations of PESA

- PESA can be only as effective as the PRIs, and that in turn depends on the capability of the elected representatives to deliver.
- PESA Gram Sabhas are the units at the ground level which in reality remain subordinate to Gram Panchayats.
- A limitation of the PESA law is that it is applicable only to those areas which are legally regarded as Scheduled Areas. significant number of tribals living outside the scheduled areas are not covered by this legislation.
- While the political decentralization has been largely successful, with elections held regularly and with ample participation of people, there is only superficial administrative and fiscal empowerment that still remains with the State Governments.
- 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 effectively by giving control to the tribals to take care of their affairs almost autonomously. However, other state legislatures and extraneous forces, such as forest department, subordinate them. It defeats the very purpose of PESA.

Bureaucrats and Corporates Think Paisa, Not PESA!

Anthropologist, Felix Padel, and the activist, Samarendra Das, in *Out of this Earth* provide a comprehensive analysis of the social and environmental impacts of the mining boom in Orissa. The authors show how companies split tribal communities by bribes and coercion, such that a division emerges between 'accepters' and 'refusers'. They document the extensive collusion, between politicians/bureaucrats and the private companies, which has displaced scores of tribals from their land they inhabited for ages. The autonomous and non-violent resistance of

tribals to destructive mining has often been misrepresented by the State, corporate interests, and even by the media at times to label it as a “Maoist threat”.

The study also found widespread transfer of tribal lands into non-tribal hands through fraud and forcible occupation. Despite a long-standing promise to repeal or amend the outdated Land Acquisition Act of 1894, it is still being used, or misused, to acquire land owned by households and communities and hand it over to the corporate sector.


WHAT SHOULD BE DONE

The real basis of democracy should be the entire village community, consisting of all village units. The village for this purpose is to be defined not as a revenue village as mentioned in the government records but as a living reality of people spontaneously thinking of themselves as one unit of people working and living together.

1. **Rationalize Overlapping Jurisdiction:** There are two different ministries in the Union Government, namely, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs that have overlapping influence on implementation of PESA – and they virtually function in isolation. This issue needs critical attention at the Central government level.
2. **Settling the land dispute as early and via gram sabha:** Land for Land must be a fundamental requirement for acquisition of tribal lands. For speedy disposal of tribal land related cases, the B.D Sharma Committee Report recommended issuing notification of a date, so that all pending cases in any Court of Law in which the land of a tribal is alleged to have been illegally transferred or occupied by any person or body, shall stand transferred to the Gram Sabha in whose jurisdiction the land is situated.
3. **Social Audit for PESA Areas:** social audit rules should be issued for all government programs in Schedule Five areas. On the lines of the Citizen’s Panel for NREGA constituted by the Ministry of Rural Development, a National Citizen’s Panel for PESA should be constituted. Eminent citizens should be empanelled for each of the PESA districts, and biannual meetings held for updates chronicling the status of the law’s implementation or violations on the ground.
4. **Ensuring Grievance Redressal Mechanism:** There is a complete absence of a functioning grievance redressal mechanism to address a routine violation of rights of villagers from the tribal community. This furthers the community’s sense of alienation. It is widely felt that functionaries of the state and other powerful interests have no fear of any punitive action for their acts against the tribals. Hence, some punitive mechanism should be constituted.

Role of NGO and Civil Society:

- Organizations working with PRIs are most suitably placed to take up the matter related to PESA. They need to provide voice to the grievances of poor tribals and make them aware of their rights given by the PESA Act. Strengthening PRIs is a pre-requisite for success of PESA.

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- There is an astounding lack of awareness that Gram Sabha is the governing body and that it has jurisdiction over the natural resources. This is an ideal area for intervention.
 - A major hurdle in proper implementation of PESA is the vested interests of corporate houses and their collusion with bureaucrats. Tribals are most defenseless when they descend like predators armed with state and money power. Watchful eyes of civil society can play a major role in this area.
 - Pointing flawed laws of state governments and their interference in PESA implementation is another initiative civil society can undertake.
 - Finally, an awareness campaign that proper implementation of PESA is the best counter of Naxals armed struggle will go a long way in bringing peace in the so called “Red Corridor” of the country.