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PANCHAYATI RAJ

25 years on, many Indian states haven't implemented a law that empowers Adivasi communities

The Panchayat (Extension to the Scheduled Areas) Act was meant to expand local self-governance. But 40% of states haven't formulated necessary rules yet.

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Representational image. | Deshakalyan Chowdhury/AFP

It is the silver jubilee year of the [Panchayat \(Extension to the Scheduled Areas\) Act, 1996](#) that was passed by the Parliament to empower people living in the fifth schedule areas, which are mostly dominated by Adivasi communities.

However, the law popularly known as PESA remains disempowered as 40% of the states under its purview have not been able to frame their rules for its implementation even after 25 years of its existence.

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The sad reality of the law, once considered as one of the most powerful legislation supporting the Adivasi community which constitutes around [9%](#) of India's population, is that it has been given a cold shoulder by those who were supposed to implement and execute it. A total of [four states](#) – Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha have not even framed the rules yet – while Gujarat used the rules of the Panchayati Raj Act to manage the fifth scheduled areas.

But even in the states where the rules were formulated, the situation is not different. States were supposed to amend their law incorporating the provisions of PESA but even though some states managed to formulate the rules they performed quite poor on ensuring their implementation.

Highlighting the importance of the PESA Act, BD Sharma, a former Commissioner for Scheduled Castes and Scheduled Tribes [wrote](#) to the President of India in 2010 and said, “The Provisions of PESA, appeared to come as a saviour that is designed to erase the historical injustice done to the Adivasi community. It engendered unprecedented fervour amongst the Adivasi people throughout the country. It was perceived as restoration of their dignity and tradition of self-governance, symbolised by ‘Mava Nate Mava Raj’ (Our Village Our Rule).”

But he noted that this fervour has faded because the ruling elite is not prepared to go by the spirit of PESA while summarising the Act's journey till then.

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“People living in fifth scheduled areas were excited as they thought that the new legislation will ensure their control over their resources, land, mines and minerals, minor forest produce etc,” Dayamani Barla, a known journalist and activist based in Jharkhand said. “But their reality did not change even after 25 years of this law.”

“Powerful people still have control over natural resources and the local community suffers at the hand of these people with clout, if they try to claim their ownership,” she told *Mongabay-India*. “The government is acquiring land without the consent of gram sabhas [village council]. Despite having a [26% Adivasi population](#), Jharkhand has failed to formulate rules for the implementation of PESA, a law meant for the welfare of the Adivasi community.”

Strengthening self-rule

Panchayat (Extension to the Scheduled Areas) Act extends the provision of the Indian Constitution to formalise the three-tier Panchayati Raj system to fifth Schedule areas with certain modifications and exceptions. While the 73rd and the 74th Amendments to the Indian Constitution passed in 1992 took the three-tier Panchayati Raj governance structure to rural and urban parts of the country, the Adivasi-dominated areas listed under the fifth schedule of the Constitution were kept out of the purview of the Panchayati Raj Acts.

The Act, enacted in 1996, took local self-governance rules to the areas listed under the fifth schedule. The fifth schedule areas, which deals with the administration of the districts dominated by the Adivasi communities, is in force in 10 states of the country. These states include Jharkhand, Chhattisgarh, Odisha, Andhra Pradesh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Rajasthan and Telangana.

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Giving historical perspective of the law, Madhya Pradesh-based advocate Anil Garg, who has done extensive work on PESA and Forest Rights Act, said that those were the times when the Union government was on spree to empower local governments.

With the 73rd amendment Act in 1992, Panchayats were given constitutional status as an institution of local self-governance for rural India. It came into force on April 24, 1993. However, scheduled areas – predominantly inhabited by the Adivasi population, were exempted from the new amendments. Given low human development indicators, there was a huge demand to empower local governance in the scheduled area as well.

Thus the government of India constituted a committee in 1994 to look into the

need for such law and modalities and how it can be extended. Chaired by Dilip Singh Bhuria, a parliamentarian from Madhya Pradesh, the committee highlighted the plight of the Adivasi communities and the exploitation they faced.



Traditional Gramsabha Sameelani (Convention of Village Council) at Dutelguda village, Malkanagiri, Odisha. Photo credit: Sricharan Behera

Based on its recommendation submitted in 1995, the government of India brought in PESA in 1996 which gave immense power to gram sabhas (village councils). They were tasked with the power to safeguard and preserve the tradition and customs of the people and their cultural identity along with their community resources.

The gram sabhas were given the power to decide about land acquisition, resettlement and rehabilitation of displaced persons. It was also supposed to plan and manage minor water bodies, recommend about license or lease regarding mines and minerals etc. It also was given the ownership of minor forest produce and many others.

In fact, in 2013, referring to the PESA, the Supreme Court of India, in a landmark case, had [asked the Odisha government](#) to go to the gram sabha to get permission for bauxite mining in Kalahandi and Rayagada district of Odisha. Local forest dwellers were asked whether bauxite mining will affect their religious and cultural rights and they decided against the mining on Niyamgiri hills which led to the cancellation of a huge project.

The case is considered a milestone that shows the power of the gram sabhas but this one of the rare achievements of PESA even as underlines the possibilities the Act carries. But experts argue that law, however, has failed to achieve its potential and has not created any significant impact on the ground.

Is PESA still relevant?

In its 25th year when several laws related to mining have been proposed, PESA faces a unique question about its relevance. For instance, in the Korba district of

Chhattisgarh, the local community is protesting the government decision of acquiring land using the [Coal Bearing Act of 1957](#) – something that experts [argue is illegal and against the spirit of PESA](#).

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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% of people whose land was acquired said they were not even asked about it. Around 26% of such people from the Gumla district of Jharkhand had similar claims.

The study was carried out in 2016-'17 when Jharkhand was facing huge protests by the Adivasi community against its proposed twist in existing laws to allow the use of Adivasi land for agriculture and other purposes.

When, in 2016, the state government tried to [amend the](#) Chota Nagpur Tenancy Act of 1908 and the Santhal Pargana Tenancy Act of 1949, the local adivasi community mobilised and resisted using PESA.

Against this move of the government, the Adivasi community began a movement using the concept of PESA, noted Dayamani Barla. From the same Khunti district,

the [Pathalgadi movement](#) began and spread to several other districts and also to neighbouring states like Odisha and Chhattisgarh. Using the provisions of PESA, Adivasi villages were declaring self-rule (rule of gram sabha), she said.

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Pathalgadi movement refers to a practice where Adivasi villages erect a huge stone structure at the entry point of their villages notifying the power and rights of the *gram sabhas*.

Instead of respecting people's view, the state government filed police cases against at least 10,000 people, Barla said. "It has been more than 20 years since Jharkhand was separated as an independent state from Bihar in the name of Adivasi welfare but not a single government has bothered to draft the rules," she said.

"Attitude of officials has been another hindrance in the implementation of PESA," said Sricharan Behara from Campaign for Survival and Dignity, which is active in Odisha. He told *Mongabay-India* that even when gram sabhas are organised, officials have an upper hand and they give the final verdict.

Many civil society organisations are also running a campaign to inform people

about their rights and how traditional gram sabhas were conducted, he said.

Similar is the case of Rajasthan. Man Singh Sisodiya, a local activist working with Adivasi communities in Rajasthan, states that though the state government formulated the rule in 2011 after repeated demands from the community, nothing has changed on the ground.

The state government was supposed to amend several local laws in order to get the desired result, which never actually happened. As a result, the execution of PESA remains in the hands of local officials and the Panchayat, he said.





Using the provisions of PESA on stone slabs, Adivasi villages were declaring self-rule in Jharkhand and neighbouring state. Photo credit: Jharkhand Janadhikar Mahasabha

In other states where rules were formulated, the situation is more or less similar. Take the example of Gujarat which formulated the rules but it was almost a copy of Gujarat Panchayati Raj Act 1993, claims a [report](#).

State governments need to change their laws in order to comply with PESA. Laws relating to land acquisition, excise, forest produce, mines and minerals, agri produce market and money lending need to be amended. States like Andhra Pradesh and Telangana have not made changes to any of the six sectors mentioned above while Maharashtra has failed to do in five. Every state has a more or less similar story to tell.

The state's PESA rules are set up at the group panchayat level and it does not

recognise smaller units of governance like villages and hamlets etc. Experts say that PESA is good legislation but it will only make sense only if taken seriously and implemented well.

What failed it?

When asked about his opinion about PESA and its journey in 25 years, Anil Garg said the law has failed and the reason is that the “government enacted the law but never pushed to formulate necessary rules”.

“As a result, verdicts passed by the gram sabhas were not taken seriously,” Garg said. “He says one example will be sufficient enough to highlight the crisis. Not a single state has given control of minor forest produce to gram sabhas so far”.

There is another reason which made the act irrelevant. After enacting PESA, the Union government brought several other legislations and included many provisions of PESA into these laws. For instance, the Land Acquisition Act, 2013 empowered gram sabhas immensely. Similarly, the Forest Right Act, 2006 has provisions of PESA and now when people need to protect their rights and resources, they look up to these laws.

In her [research](#), Nupur Tiwari of the Indian Institute of Public Administration has noted that PESA failed to achieve its desired target because it does not specify rule-making powers or provide a time period by which the States have to frame rules.

She observed that states have not framed appropriate rules under PESA, and therefore the official system has not operationalised PESA.

This article first appeared on [Mongabay](#).

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