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## PESA act, 1996

Panchayats (Extension to Scheduled Areas) Act, 1996 is a law enacted by Government of India to cover the "Scheduled Areas", which are not covered in the 73rd Constitutional amendment. This particular act extends the provisions of Part IX to the Scheduled Areas of the country. PESA brought powers further down to the Gram Sabha level. The Gram Sabha in the Panchayat Act were entrusted with wide ranging powers starting from consultation on land acquisition to that of ownership over minor forest produces and leasing of minor minerals.

### Under the PESA, the Gram Sabha or Panchayats at appropriate level shall have the following important powers:

- To be consulted on matters of land acquisition and resettlement.
- Grant prospecting license for mining lease for minor minerals and concessions for such activities. Planning and management of minor water bodies.
- The power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant. The ownership of minor forest produces.
- The power to prevent alienation of land and to restore any unlawfully alienated land of a scheduled tribe. The power to manage village markets.
- The power to exercise control over money lending to scheduled tribes.
- 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

### Problems with PESA:

- **Dilution of role of Tribal Advisory Councils:** PESA comes under the Fifth Schedule, which mandates Tribal Advisory Councils to oversee tribal affairs and also gives extrajudicial, extra constitutional powers to the Governors of each State to intervene in matters where they see tribal autonomy being compromised.
- However, the councils, with the Chief Minister as their chairperson, have evolved into a **nonassertive institution amid** the machinations of upper-class politics, and its representatives

hardly speak against the State governments' policies.

- The Governors, in order to have friendly relations with the Chief Ministers, have desisted from getting involved in tribal matters. Tribal activists have constantly complained that there is not even a single instance where the **Governors have responded to their petitions for interventions** in threatening crises, such as deepening clashes over land, mining or police excesses.
- **Lack of coordination at Centre:** Even if one were to expect proactive intervention from the Centre, PESA would get entangled in bureaucratic shackles. Two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have an overlapping influence on the implementation of PESA and they function almost without any coordination.
- **Lack of operationalisation:** In most of the state the enabling rules are not in place more than eight years after the adoption of the Act suggests that the state governments are reluctant to operationalise the PESA mandate.
- **Ignoring the spirit of PESA:** The state legislations have omitted some of the fundamental principles without which the spirit of PESA can never be realized. For instance, the premise in PESA that state legislations on Panchayats shall be in consonance with customary laws and among other things traditional management practices of community resources is ignored by most of the state laws
- **Ambiguous definitions:** No legal definition of the terms like minor water bodies, minor minerals etc. exist in the statute books. The states in their conformity legislations have also not defined the term leading to ambiguity and scope of interpretation by the bureaucracy.

In recent years, many reports 'The Report of Expert Group of the Planning Commission on Development Challenges in Extremist Affected Areas' (2008), 'The Sixth Report of the Second Administrative Reforms Commission' (2007), 'The Balchandra Mungekar Committee Report' (2009), etc. have clearly underlined the dismal situation of the implementation of PESA.

Therefore, there is an urgent need to opt for an effective device whereby maximum people can be informed, made aware and motivated to come forward for the proper implementation and execution of PESA. There is an urgent need to break the culture of silence among tribal and to strive for capacity building, sensitization and orientation to improve the tribal self-rule scenario

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