Implementation of Pesa (Panchayats extension of schedule areas) 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 non existent 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”. This paper analyse the implementation of Panchayats Extension of Schedule Areas (PESA) in India and Andhra Pradesh.

Keywords: PESA, tribal, schedule areas, sub-plan, panchayati raj institutions, gram sabha

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

Objective

To study the implementation of Panchayat Extension of Scheduled Areas (PESA)

Methodology

The required data for this paper was collected from various books and journals besides consulting official records and government reports, magazines by current issues related to Political empowerment of Tribes, Panchayati Raj Institutions, and data related to PESA Act has been referred.

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),

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certain areas besides the then existing Scheduled Areas, 
were also found to be having preponderance of tribal 
population. 
A review of protective measures available to the tribal 
of these newly identified areas visa- vis Scheduled Areas was 
made and it was observed that a systematic use of protective 
measures and other powers available to the executive under 
Fifth Schedule will help in effective implementation of the 
development programmes in Sub-Plan Areas. 
Therefore, in August 1976 it was decided to make the 
boundaries of the Scheduled Areas co-terminus with the 
Tribal Sub-Plan areas. Accordingly, Clause 6-2 of the Fifth 
Schedule was amended vide the Constitution (Amendment) 
Act, 1976 to empower the President to increase the area of 
any Scheduled Areas in any State. Pursuant to above 
the President have issued from time to time Orders specifying 
Scheduled Areas afresh in relation to the States of Bihar, 
Gujarat, Madhya Pradesh, Maharashtra, Orissa and 
Rajasthan. The tribal areas in Himachal Pradesh were 
scheduled in 1975, keeping in view the principle of making 
the Sub plan and the Fifth Schedule areas coterminous. 
Thus, broadly speaking, the Tribal Sub-plan areas (Integrated 
Tribal Development Projects/Integrated Tribal 
Development Agency areas only) are coterminous with 
Scheduled Areas in various States. As of now 9 States have 
Fifth Schedule areas to which PESA applies, such as (i) 
Andhra Pradesh (ii) Chhattisgarh (iii) Gujarat (iv) Himachal 
Pradesh (v) Jharkhand (vi) Madhya Pradesh (vii) 
Maharashtra (viii) Orissa and (ix) Rajasthan [2]. 

Pesa in India 
The second Administrative reforms Commission too has 
stressed the effective implementation of PESA1996. 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 
lands have been violated. 
Hence PESA seems to be the best policy to fulfil 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” [1].

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 
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. 

Ministry of Panchayat Raj Adds That 
The Government of India, Ministry of Panchayati Raj, in its 
ofice 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. 
The Report of the Expert group of the Planning Commission 
on ‘Development Challenges in Extremist Affected Areas’ 
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 
ammed 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) [4].

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
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 [5].

The PESA gives radical governance powers to the tribal community and recognize its traditional community rights over natural resources. It is an important step by the Indian State to make the system more participatory in real meaning, but after 16 years we are nowhere with this act. State governments fully failed to operationalise the PESA mandate. However, the reasons why PESA failed to deliver has been a result of the lack of clarity, legal infirmity, bureaucratic apathy, lack of political will, resistance to change in power hierarchy and so [6].

**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, Adilabad, Mahabubnagar 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 [7].

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-forest) natural 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, 4).

State governments were required to amend their respective Panchayati Raj Acts within a year and not to make any law that would be inconsistent with the mandate of PESA. The State of Andhra Pradesh amended its Panchayati Raj Legislations in 1998 to incorporate the provisions of PESA. Recently, to implement the provisions of PESA, Andhra Pradesh Panchayat Extension to Scheduled Areas (PESA) Rules, 2011 have been enacted. However, the manners in which PESA provisions have been incorporated in Panchayati Raj framework in Andhra Pradesh have been at variance with the letter and spirit of PESA. Besides, parallel provisions exist in other state laws governing the subject matters under PESA, which do not distinguish between a Scheduled Area and a non-Scheduled Area. Finally, since the focus nationally is on reviewing the existing approaches to natural resource management in Scheduled Areas and to create an ideal framework for forest and Scheduled Area governance and also various key legislations on forest tribal

### Table 1: Fifth Schedule Areas

<table>
<thead>
<tr>
<th>State</th>
<th>Areas</th>
</tr>
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<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahabubnagar, Prakasam (only some Mandalas are scheduled Mandals)</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>Dumka, Godda, Deoghar, Sahabgunj, Pakur, Ranchi, Singhbhum (East &amp; West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>Sarbujja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehodol, Chhindwada, Kanker</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour subtehsil in Chamba district</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena</td>
</tr>
<tr>
<td>Gujarat</td>
<td>Surat, Bharuch, Dans, Valsad, Panchmahal, Sadodara, Sabarkanta (partsof these districts only)</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Thane,Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadhicholi, Chandrapur (parts of these districts only)</td>
</tr>
<tr>
<td>Orissa</td>
<td>Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these three districts), Raigada, Keonjhar, Sambalpur, Boudh, Saurang, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only) Rajanagaram Banksara, Dungarpur (fully tribal districts), Udaipur, Chittaugarh, Siroi (partly tribal areas)</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaugarh, Siroi (partly tribal areas)</td>
</tr>
</tbody>
</table>

Source: Prasad R.R. and V. Annamalai, 2013:87
interface such as new the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, have been enacted, therefore, the PESA framework in Andhra Pradesh also needs to be updated in the light of national and global developments [8].

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 [9].

Findings

The introduction of PESA in 1996 was a welcome event that conferred relatively greater autonomy to Gram Sabhas. However, PESA’s sincere implementation has not been seriously attempted by the government, which is still dominated by centralised structures and laws that are in contradiction with the progressive provisions of PESA. In a few places, since the appearance of PESA, an attempt has been made to restore control over the village resources to the people. People have faced sometimes violent reactions from the ruling class. As such, conflicting areas were identified prior to advocating the implementation of various provisions of PESA. There are policy loopholes between self-governance laws and existing laws.

PESA Act is a path breaking Act which attempts to empower the Gram Sabha. It respects the cultural and traditional customs of tribal communities. PESA Act will remain merely a good intention on paper unless deliberatable efforts are made to operationalise various provisions of the Act. The existing contradictions in the overlapping of power and functions of Gram Sabha and many government departments need to be sorted out. It may not be an easy process to withdraw power and control from government departments in favour of Gram Sabhas. This would require a demonstration of good Panchayat management, documentation of cases reflecting conflicts and contradictions, dialogue and building pressure on the government for policy change. Civil society efforts are focusing on building good examples of the implementation of PESA Act after the second round of elections. The results of the tribal self-rule will be more clearly visible in the next few years. The efforts of many movements committed to taking up issues of tribal rights, identity and equality are also stressing the operationalisation of PESA in its true spirit. There are many voluntary organisations working with tribal communities, and they have an important role to play in the coming years to strengthen the empowerment process of these indigenous institutions, taking advantage of the already existing Panchayat Extension to Schedule Areas (PESA) Act.

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. 57 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.

References