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**Ramineni Nagamani**  
Lecturer in Political Science,  
BSSB Degree College,  
Tadikonda, Guntur District,  
Andhra Pradesh, India

## Implementation of Pesa (Panchayats extension of schedule areas) in India and Andhra Pradesh: An overview

**Ramineni Nagamani**

### 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. 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 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 analyses 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),

**Correspondence Author:**  
**Ramineni Nagamani**  
Lecturer in Political Science,  
BSSB Degree College,  
Tadikonda, Guntur District,  
Andhra Pradesh, India

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 vis-à-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 <sup>[2]</sup>.

### **Pesa in India**

The second Administrative reforms Commission too has stressed the effective implementation of PESA 1996. 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 rights 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" <sup>[1]</sup>.

### **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 1996: Policy Brief, UNDP, 2012:29) <sup>[3]</sup>.

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.

Powers statutorily devolved upon the Gram Sabha and Panchayats are not matched by the concomitant transfer of funds and functionaries resulting in the non-exercise of such powers. States have, over the years, been repeatedly urged to expedite this process, but progress has been slow and often, only symbolic, with no real intention to operationalise the provisions in spirit".

### **Ministry of Panchayat Raj Adds That**

The Government of India, Ministry of Panchayati Raj, in its office 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' (2008) <sup>[4]</sup> observed that: "The areas in Central India where 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 armed 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) <sup>[4]</sup>.

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

6. Gujarat
7. Maharashtra
8. Orissa
9. Rajasthan (Panchayat (Extension to Scheduled Areas) Act, 1996:8).

**Table 1:** Fifth Schedule Areas

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some Mandals are scheduled Mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East & West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour subtehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharauch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (partsof these districts only)
Maharashtra	Thane,Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these threedistricts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only) Rajasthan Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Source: Prasad R.R. and V. Annamalai, 2013:87

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<sup>[5]</sup>.

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<sup>[6]</sup>.

### 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, Aadilabad, Mahbubnagar 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 Srisailem hill ranges and in the south are the Tirumalai-Tirupati hills<sup>[7]</sup>.

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-timber) forest 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 Panchayat 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

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<sup>[8]</sup>.

*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<sup>[9]</sup>.

### 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. 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.

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