

**Ministry of Panchayati Raj
(PESA Division)**

Brief note on PESA for the State of Himachal Pradesh

1. Background:

The 73rd Constitutional Amendment which came into force w.e.f. 24th April, 1993, inserted Part IX in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India. Article 243M of the Constitution, while exempting the Fifth Schedule Areas (FSA) from implementation of Part IX of the Constitution, provides that Parliament may by law extend its provisions to the Scheduled and Tribal Areas subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment to the Constitution. On the basis of the report of the Bhuria Committee submitted in 1995, Parliament enacted “The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996” popularly known as PESA Act, extends Part IX of the Constitution with certain modifications and exceptions to the Fifth Schedule Areas notified in ten States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. These Schedule areas in ten States extend in 108 districts (45 fully and 63 partly covered).

2. Importance of the provisions of PESA Act:

Gram Sabhas and Panchayats, under PESA Act, have been vested with greater powers, which include approval of plans, programmes and projects for social and economic development, mandatory consultation before acquisition of land in the Schedule Areas for development projects and before resettling or rehabilitating persons affected by such projects, mandatory recommendations prior to grant of prospecting licence or mining lease and grant of concessions for exploitation of minor minerals in Scheduled Areas. Panchayats and Gram Sabhas, in the Scheduled Areas, have been endowed with such powers and authority as may be necessary to enable them to function as institutions of self-government. In short, PESA Act mainly aims to protect the tribal population from exploitation by making Gram Sabhas and Gram Panchayat centers of self-governance and has laid special thrust to empower Gram Sabha which has not been conferred by any other Act in any State. Effective implementation of PESA Act will bring about the following benefits to the tribal population:

- Institutionalize self-governance and people’s participation in decision making. By notifying Gram Sabha at village (*hamlets or group of hamlets/ habitation or group of habitations*) level, people will feel more comfortable in taking part in the governance of the village.

- Reduce alienation in tribal areas as they will have control over the utilization of public resources in the village through Gram Sabha.
- Reduction of alienation and resentment among tribal population will have a positive impact in reducing left wing extremism in the districts affected by it.
- Reduce poverty and out-migration among tribal population as they will have control over natural resources such as minor water bodies, minor forest produce, minor minerals, etc. Control over and management of these resources will improve their livelihoods and incomes.
- Minimise exploitation of tribal population as they will be able to control and manage money lending, consumption and sale of liquor and also village markets.
- Check illegal land alienation and also restore unlawfully alienated tribal land. This will not only reduce conflict but will also improve socio-economic status of tribals.
- Better implementation on developmental schemes and programmes due to enhanced people's participation in planning and identification of beneficiaries.
- More accountable and responsive local administration due to control over functionaries of social sector and also power to issue utilisation certificates.
- Promotion of cultural heritage through preservation of traditions, customs and cultural identity of tribal population.

3. Notified Fifth Schedule Areas (FSA): The details of notified FSA/PESA areas in the State of Himachal Pradesh are as under:

- ✓ PESA District (Fully & Partly covered): 3
 - PESA District (Fully covered): 2 (Lahaul & Spiti, and Kinnaur)
 - PESA District (Partly covered): 1 (Chamba)
- ✓ PESA Blocks: 7
- ✓ PESA Panchayats: 151
- ✓ PESA Villages: 806

4. Status of implantation of PESA Act in the State of Himachal Pradesh:

Ministry of Panchayati Raj review the implementation of PESA Act, time to time and pursue with the States to expedite action to bring Panchayati Raj Act and subject laws in conformity with PESA Act. Ministry had conducted a Study on compliance of the State Panchayati Raj Act and other concerned subject laws with the provisions of PESA Act. The Study Reports were circulated to all the PESA States including Himachal Pradesh, with a request to consider and make necessary amendments in State laws, wherever required, for compliance to PESA provisions. The status of implementation of PESA Act in the State is as under:

- The State Government of Himachal Pradesh has framed State's own PESA Rules.

- The State of Himachal Pradesh has made progress in respect of compliance of concerned State subject laws. Still, concerned subject laws need attention of the State Government to make it fully compliant with PESA Act. The status of compliance of concerned subject laws are as under:

States	Land acquisition	Excise	Forest produce	Mines and minerals	Agri produce market	Money lending
Himachal Pradesh	Y	Y	Y	Y	N	N

- The State Government of Himachal Pradesh largely has made its Panchayati Raj Act compliant with the section 4 of PESA Act. The status of compliance of Panchayati Raj Acts with Section 4 of PESA Act are as under:

Status of compliance of Panchayati Raj Acts with Section 4 of the PESA Act

Sl. No.	Provisions of the Act	Status
1	4(d): Customary mode of conflict resolution by the Gram Sabha	Y
2	4(e): Selection of programme beneficiaries by Gram Sabha	Y
3	4(f): Gram Panchayat to obtain Utilisation Certificate from Gram Sabha	Y
4	4(h): Nomination by State Government of persons of ST not represented in intermediate & district PRIs	Y
5	4(i): Consultation with Gram Sabha or PRI before land acquisition & resettlement & rehabilitation	Y
6	4(j): Planning & management of water bodies by Gram Sabha or PRI	Y
7	4(k): Recommendation by Gram Sabha or PRI before grant of prospecting license or mining lease	Y
8	4(l): Recommendation by GS or PRI before exploitation of minor minerals	Y
9	4(m)(i): Power to restrict sale of intoxicant to PRI and Gram Sabha	Y
10	4(m)(ii): Ownership of Minor Forest Produce to PRI and Gram Sabha	Y
11	4(m)(iii): Power to prevent land alienation to PRI and Gram Sabha	Y
12	4(m)(iv): Power to manage village markets to PRI and Gram Sabha	Y
13	4(m)(v): Control money lending to PRI and Gram Sabha	Y
14	4(m)(vi): Control of social sector institutions & functionaries to PRI and Gram Sabha	Y

‘Y’ denotes the provision has been made PESA compliant.

‘N’ denotes action is yet to be completed.

5. Recent initiatives taken by MoPR for effective implementation of PESA Act:

Panchayats being the ‘State’ subject, the powers regulating the functioning of PRIs including framing of local laws rests with the respective State Governments. The MoPR being the nodal Ministry, strives to ensure implementation of PESA Act primarily through advocacy and financial support. The States are being regularly persuaded for effective implementation of

PESA Act. Some of the initiatives taken by MoPR to strengthen the implementation of PESA Act are as under:

- **Harmonization Committee:** A Committee on Harmonization of Central Laws with PESA Act, set up under the chairmanship of the Union Law Secretary, has made recommendations to harmonise certain Central laws with the provisions of PESA. The recommendations have been shared with the Ministries requesting them to address the issues of harmonisation of the laws. Ministry of Coal and Ministry of Tribal Affairs have agreed to take actions to amend their relevant laws.

- **State Level Workshops in 2014-15:** The Ministry organised One-Day State-level Workshops in eight PESA States during 2014-15 to give a fillip to the implementation of PESA and improve the level of awareness on the subject among the Departments of the State Governments and the representatives of PRIs. The Workshop aimed to bring an interface between the Government and the other stakeholders, was participated by senior officers from line departments at the State level, district officials as District Magistrates, Divisional Forest Officers, etc., Chairpersons of Zila Parishads, Panchayat Samitis, other elected representatives of Panchayats, active members of Gram Sabha, active NGOs, advocacy organisations and so on.

- **National Workshop:** A National Workshop was organized at New Delhi on February 4-5, 2016 to review the progress of implementation of PESA in States, issues and challenges being faced and the way forward. The workshop was attended by Union and State Ministers of Panchayati Raj, State Tribal Welfare Department, State Secretaries, officials of Union Ministries and other stakeholders.

- **National Meeting of Tribal Women Presidents of Gram Panchayats:** A National Meeting of Tribal Women Presidents of Gram Panchayats of Fifth Schedule Areas was held at Vijayawada, Andhra Pradesh on April 19, 2016 on “the Role of Women Gram Panchayat Presidents in the Development of the Fifth Schedule Areas”. The meeting was attended by the Union and the State Ministers including their officials besides 850 Tribal Women Gram Panchayat Presidents from the Fifth Schedule Areas.

- **Resource persons to oversee the Implementation:** In January 2015, the Ministry has requested the State Governments to engage a State level resource person for PESA in the SPRCs under RGPSA. This resource person will coordinate all the efforts related to PESA in a State. Due to staff crunch and non- funding of PESA, the Act has been conveniently neglected by the States. At the District level, they have been requested to engage the PMRD Fellows to support the district administration in this effort.

- **Initiatives under Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA) to strengthen Gram Sabhas:** FSA are being assisted financially by providing the following, under RGPSA, to strengthen Gram Sabhas:
 - (i) Provision of one Gram Sabha Mobiliser in each Gram Panchayat PESA to ensure maximum participation of members of PRIs in its decision making process
 - (ii) One PESA coordinator in each Block,
 - (iii) One PESA coordinator in each district
 - (iv) Provision of a sum of Rs.10,000 for each Gram Panchayat for orientation programmes for Gram Sabhas in PESA areas, and
 - (v) A sum of Rs.10,000 for contracting the NGOs for regular hand holding. The purpose of this assistance is to provide support to Gram Panchayat for its efficient functioning as the Panchayat in PESA areas need motivation and exposure for better practices.

- **Handbook of Gram Sabha Mobilisers and Coordinators** in Fifth Schedule Areas has been released on National Panchayati Raj Day, 24th April, 2015. This Handbook has been prepared to guide Gram Sabha and Community Mobilizers and also PESA Coordinators to ensure effective implementation of PESA. The Book contains basic information about the provisions of PESA, principles and methods of community mobilization and role of Gram Sabha/Community Mobilisers and PESA Coordinators.

- **Separate guidelines of GPDP:** A separate guidelines for participatory Gram Panchayat Development Plan (GPDP) for local development in PESA Areas, circulated to PESA States.

- **Advisory on bonded labour and distress migration:** An advisory on bonded labour and distress migration in PESA areas have been issued by MoPR.

- **Fourteenth Finance Commission award:** Financial assistance under the Fourteenth Finance Commission award is also available to the Fifth Schedule Areas for supporting and strengthening the delivery of basic services – water supply, sanitation including septage management, sewerage, storm water drainage and solid waste management, street lighting, local body roads and footpaths, parks, playgrounds, burial and cremation grounds. It is expected that the enhancement of direct and untied funding to the local bodies in these areas will improve systems of administration as well as basic services.
