

Frequently Asked Questions

Question 1: What is PESA?

Answer: This is a legislation which extends the provisions of Panchayats to the Fifth Schedule Areas. These areas have preponderance of tribal population. This Act is called "The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996". In short form this is popular as "PESA".

Question 2: How many States with Fifth Schedule Areas are covered under PESA?

Answer: Total ten States are covered under PESA. These States are: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

Question 3: Which community has the right to contest elections for the post of Chairperson of Panchayati Raj Institutions (PRIs)?

Answer: All posts of Chairpersons of PRIs in the areas covered under PESA are reserved for tribal community and only persons belonging to tribal community can contest for these posts.

Question 4: What are the important powers provided to Gram Sabha under PESA?

Answer: Following three types of powers have been given to a Gram Sabha under PESA:

- (i) **Developmental:** consultation before land acquisition, prevent land alienation, power to enforce prohibition, prior approval of all developmental projects and control over tribal sub-plan, power to issue utilization certificate for developmental expenditure, selection of beneficiaries of poverty alleviation and other schemes of individual benefits, control over institutions and functionaries of social sectors.
- (ii) **Dispute resolution as per traditional laws and customs:** collective resolution of disputes on the basis of customs, traditional laws and religious beliefs of tribal areas.
- (iii) **Ownership and management of natural resources:** maintaining ownership of local tribal community over water resources, common lands, minor forest produce, minor minerals, etc. as well as effective implementation and monitoring of related laws.

Question 5: What are the powers given to Gram Sabha/ PRIs under PESA Act?

Answer: Following legal powers have been given to Gram Sabha/PRIs under PESA Act:

- i. Safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- ii. Approve plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level.
- iii. Identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- iv. Certification of utilisation of funds by the Panchayat for the plans, programmes and projects for identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- v. Right to be consulted before making acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas.
- vi. Right to plan and manage minor water bodies in the Scheduled Areas.
- vii. Recommendations prior to grant of prospecting licence or mining lease for minor minerals and for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas.
- viii. Power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant.
- ix. Ownership of minor forest produce.
- x. Power to prevent alienation of land in the Scheduled Areas and to restore any unlawfully alienated land of a Scheduled Tribe.
- xi. Power to manage village markets.
- xii. Power to exercise control over money lending to the Scheduled Tribes.
- xiii. Power to exercise control over institutions and functionaries in all social sectors.
- xiv. Power to control over local plans and resources for such plans including tribal sub-plans.

Question 6: Which forest produce are termed as Minor Forest Produce?

Answer: “Minor Forest Produce” has been defined in “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006” which includes all non-timber forest produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey-wax, lac, tendu leaves, medicinal plants, herbs, roots, tubers, etc.

Question7: Who are members of Gram Sabha?

Answer: All registered voters in the electoral roll of the Panchayat in the village are members of Gram Sabha.

Question 8: How is a village constituted under PESA?

Answer: A Village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets.

Question 9: How is Gram Sabha constituted under PESA?

Answer: As per PESA, every village shall have a Gram Sabha consisting of persons whose names are included in the rolls for the Panchayat at the village level.

Question 10: Who is the Secretary of the Gram Sabha?

Answer: Secretary of the Gram Panchayat is also the Secretary of the Gram Sabha.

Question 11: What will be the quorum of the Gram Sabha?

Answer: Quorum of the Gram Sabha will be as per State PESA Rules, State Panchayati Raj Acts and State Panchayati Raj Rules. For example, in Rajasthan quorum is 10% of total members of Gram Sabha. In Andhra Pradesh, the quorum is not less than 1/3” of members of Gram Sabha of whom at least 50% shall be ST members. In Maharashtra, the quorum is twenty-five per cent of the total members or one hundred, whichever is lower.

Question 12: How many meetings of Gram Sabha are mandatory in a year?

Answer: Number of mandatory meetings of the Gram Sabha will be as per State PESA Rules, State Panchayati Raj Acts and State Panchayati Raj Rules. Many States have a minimum number of 4 mandatory meetings of Gram Sabha in a year.

Question13: When can a special meeting of Gram Sabha be called?

Answer: Other than the mandatory meetings of Gram Sabha, special meetings may also be convened as per the provisions of State PESA Rules, State Panchayati Raj Acts and State Panchayati Raj Rules. It is normally convened when in the general meeting of a Gram Sabha, a decision is taken in this regard or when the Gram Panchayat receives a proposal on which opinion of Gram Sabha is necessary or when a certain percentage or number of members of Gram Sabha submit a written demand to the Secretary for a special meeting.

Question 14: When can a joint meeting of two or more Gram Sabhas be called?

Answer: For taking decisions on a project or proposal having impact on more than one village and requiring opinion of more than one Gram Sabha, a joint meeting of two or more Gram Sabhas may be called.

Question 15: Can Gram Sabha constitute its committee/s?

Answer: Gram Sabha may constitute Committee/s to carry out its functions like maintaining peace and order, management of minor forest produce, village markets, sale or consumption of intoxicants, control over money lending and management of water bodies, etc. The duties assigned to the Committees may be withdrawn or modified at any time by passing a resolution by the Gram Sabha. The Standing Committees should act in accordance with the instructions of Gram Sabha. A joint committee representing two or more PESA villages may be constituted with the consent of concerned Gram Sabhas.

Question 16: What is a Gram Sabha Kosh (fund)?

Answer: Gram Sabha can maintain a corpus fund (e.g. Gram Sabha Kosh) which will be required for carrying out several management functions assigned to Gram Sabha. The corpus fund may be raised through taking contributions either in the form of cash, or goods, either from Government or non- Government organisations or in the term of value of labour in villages.

Question 17: What are the provisions of dispute resolution under PESA?

Answer: Gram Sabha is competent to safeguard and preserve customary modes of dispute resolution. As per PESA Act, dispute resolution is in the domain of village community. These disputes may include minor disputes of any description, including those relating to property, land, sharing of crops, land boundary disputes, inheritance, easement rights, use of community resources, issues involving customary practices and usages, cases involving galaxy of beliefs including magic, sorcery, etc. and also disputes vis-a-vis individuals, concerning credit of all descriptions, molestation, fake caste certification cases and such like. Rajasthan PESA Rules 2011 provide for constitution of a Peace Committee for dispute resolution and maintenance of law and order. On the direction of Gram Sabha, the Peace Committee tries to resolve the dispute and report to Gram Sabha or with approval of Gram Sabha report to designated Magistrate. Such dispute resolution will be as per customs and traditions and through open hearings. All decisions on the proposal of Peace Committee will be taken by Gram Sabha on the basis of majority. In case of any threat of breach of peace or law & order in the village, local Police will report to Gram Sabha or Peace Committee except where immediate action is necessary. Police will register FIR only in case of serious crime (with provision of punishment more than 2 years under IPC, 1860) and send a copy to Gram Sabha/ Peace Committee. Gram Sabha will try to resolve the conflict in its next or special meeting.

Question 18: What are the responsibilities of Gram Sabha in management of Common Property Resources?

Answer: Gram Sabha has following responsibilities in the management of community resources:

- (i) Conservation and management of all community resources in the village such as water, common land, community forest, pasture land, minor minerals, etc. as per local traditions and customs.
- (ii) Gram Sabha will ensure that community resources are utilised in a manner that there is improvement in means of livelihood and equality among people.

Question 19: What is the responsibility of Gram Sabha in land acquisition?

Answer: PESA Act provides that the Gram Sabha or the Panchayats at appropriate level shall be consulted before making the acquisition of land for development projects or before resettling or rehabilitating persons affected by such projects in the Scheduled Areas. The concerned project authorities shall place all the relevant written information along with the proposal which would include:

- (i) complete outline of the proposed project including the possible impact of the project;
- (ii) proposed land acquisition;
- (iii) the new people likely to settle in the village and possible impact on the area and society; and
- (iv) proposed participation, amount of compensation and job opportunities, for the people of the village.

The Gram Sabha after considering all the facts, shall make a recommendation regarding the proposed land acquisition and rehabilitation and resettlement plan of persons who are affected or displaced. In case the Land Acquisition Officer is not in agreement with the recommendations of the Gram Sabha, she/he will send the matter again to the Gram Sabha for its reconsideration and decision. The Land Acquisition Officer or the Project Authorities may pass an order against the recommendations of the Gram Sabha, if aggrieved, after recording the reasons for doing so and same shall be communicated to Gram Sabha. In case of industrial projects, all the Gram Sabhas that are influenced by such projects shall be consulted before commencing any activity.

State Revenue Department may issue instructions to all District Collectors to necessarily consult the concerned Gram Sabha before land acquisition.

Question 20: What can Gram Sabha do to prevent other forms of tribal land alienation?

Answer: PESA empowers Gram Sabha to prevent alienation of land in the Scheduled Areas and take appropriate action to restore unlawfully alienated land of a Scheduled Tribe. The Gram Sabha must ensure that no land belonging to Scheduled Tribes is transferred to non-ST persons. If the Gram Sabha is of the opinion that attempts are being made to alienate land belonging to STs, it may go into details of such cases and pass resolution as to how such attempts should be tackled. If Gram Sabha finds that a non-ST is in unlawful occupation of any land belonging to ST member, it shall restore the possession of such land to the original owner as per laid down procedure. The Gram Sabha adopts traditional dispute resolution method while adjudicating land conflicts. Concerned department officials shall make available land records for taking correct decision by Gram Sabha.

State Government has to provide detailed procedures about how alienated land will be restored to the original landowners. For example, as per Rajasthan PESA Rules, 2011, to remove possession of unlawfully alienated tribal land, Panchayat Samiti will use powers of Tahsildar under the provisions of Rajasthan Land-Revenue Act, 1956 (Section-15). Under the Himachal Pradesh PESA Rules 2011, if Gram Sabha finds that a non-ST is in possession of any land owned by an ST, it can take up the matter with the concerned authority of the Revenue Department through the Pradhan of the Gram Panchayat, for restoration of possession of such land to that person to whom it originally belonged.

Question 21: What are the provisions under PESA Act to control money lending?

Answer: PESA mandates the State Legislatures to empower Gram Sabha to exercise control over money lending transactions. Money lending transactions include loan, etc. extended by Government, Co-operatives, money lenders, banks and other institutions. Gram Sabha may constitute a Debt Relief Committee to deal with money lending transactions and its related issues in relation to STs. A borrower can bring to the notice of Gram Sabha if he or she is harassed by a money lender or by a lending institution and is being charged exorbitant rates of interests, etc. Gram Sabha can authorise the Debt Relief Committee to conduct an enquiry into such complaints with the support of Gram Sabha/Community Mobilizer and place a report before Gram Sabhas for its decision. Gram Sabha, especially in the case of the tribals, may instruct a bank, society or any individual money lender that loans be disbursed or repayments made after informing the lending details to the Gram Sabha. It should also inform the Government of any cases of exploitation, so that the concerned Department of Revenue, Banking, and Cooperatives can also take corrective action. Gram Sabha is competent to review agreements of all kinds of labourers in the village and ensure that there is no forced labour in lieu of money borrowed from the lender. However, the concerned State Government is required to make Rules in this regard.

In Rajasthan, Gram Panchayats have been assigned the powers of Assistant Registrar and Panchayat Samiti has been given powers of Registrar under Rajasthan Moneylending Act, 1963.

Question 22: What are the provisions under PESA for the Gram Sabha's ownership of Minor Forest Produce?

Answer: Under PESA Act, Gram Sabha is endowed with ownership of Minor Forest Produce (MFP). Gram Sabha is competent to ensure protection of trees or plants which yield minor forest produce and also take steps for protection of endangered plant species and impose restrictions on collection or extraction of plant material or products. The State Government is required to make rules in this regard. One or more Gram Sabhas together, in consultation with the Forest Department or State Co-operative or any other State owned agencies involved in MFP trade, may decide the minimum support price for the collection of Minor Forest Produce or exchange rates for other commodities. Gram Sabha may determine the royalty payable by the collector or the trader on Minor Forest Produce. This amount generated from such methods shall be deposited in Gram Sabha Kosh. Permission is required from the Gram Sabha to collect or transport any item of Minor Forest Produce by any department or institution or individual who is not a member of the Gram Sabha. Prior approval of the Gram Sabha is required for organising trade of any Minor Forest Produce by the State Agencies. The Gram Sabha and the collectors will have right over net profit arising from such trade. Gram Sabha can adjudicate the disputes among the members of MFP collection groups.

Question 23: What powers Gram Sabha/ PRIs have been given under PESA with regard to control over minor minerals?

Answer: Under PESA Act, it is mandatory to have recommendation of Gram Sabha and Panchayats at appropriate level prior to grant of prospecting licence or mining lease for minor minerals and for grant of concession for the exploitation of minor minerals by auction in the Scheduled Areas. Consultation should be interpreted as mandatory consultation. Full facts about the proposed activity, its zone of influence, its economic, social and environmental impact, rehabilitation and sustainable livelihood plans must be placed before the Gram Sabha. If at any point of time it is found that the information provided by the authority concerned is false or information has been kept hidden, the Gram Sabha shall have the right to withdraw the recommendation. Authority concerned must report the progress of the project for which it has obtained recommendation of Gram Sabha. State PESA Rules will further detail out this provision of PESA Act.

For example, Rajasthan PESA Rules empowers Gram Sabha in case of mines falling in one Gram Panchayat area, Panchayat Samiti in case of mines falling in more than one Gram Panchayat area and Zila Parishad in case of mines falling in more than one Panchayat Samiti area for recommending grant of concession for the exploitation of minor minerals. Mines Department will issue orders to Mining Engineers to necessarily obtain

recommendations from the concerned Gram Sabha before renewing mining lease of minor minerals.

In Maharashtra and Himachal Pradesh, the Gram Sabha is competent to plan and control the excavation and use of all the minor minerals including soil, stones, sands, etc., which is to be found in its area. The villagers may use minor minerals for their individual needs as per the traditional practice with permission of the Gram Sabha. If any permission is given by any Government Department for the exploitation of minor minerals, it shall be mandatory for the said Government Department to obtain the necessary concurrence from the Gram Sabha.

In Andhra Pradesh and Telangana, only individual local members of ST or societies comprising of exclusively local ST members shall be entitled for grant of prospecting license or mining lease for minor minerals and grant of concession for exploitation of minor minerals by auction.