

# 25 Years of PESA Act: 1996-An Overview



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# Outline

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# PESA Act – 1996:

a unique legislation, described as a ‘Constitution within the Constitution’.

- ❖ PESA is applicable to Fifth Scheduled areas ; PESA powers are additional to normal powers of Panchayats
- ❖ Ten States with Fifth Scheduled areas were to pass their own State PESA Act or make amendments to their existing PR Acts
- ❖ The most important aspect of PESA is that it recognizes the self governance capacity of tribal panchayats in traditional context.
- ❖ PESA Act acknowledges tribal traditional rights over natural resources such as forest, land and water.



# Key Provisions in PESA Act-1996

**Section 4(m) of the PESA Act** says that to function as an institution of self-government, a state legislature shall ensure that the panchayat at the appropriate level / the gram sabha is endowed specifically with:

- (a) power to enforce prohibition or to regulate in respect of the sale and consumption of any intoxicant;**
- (b) ownership of minor forest produce;**
- (c) prevention of alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of an ST;**
- (d) management of village markets;**
- (e) Regulate money lending to STs; and**
- (f) exercise control over institutions and functionaries in all social sectors; control over local plans and resources for such plans including tribal sub-plans.**



# Gram Sabha-A key aspect in PESA Act

- ❖ PESA Act, allows **hamlets to become villages and have their own Gram Sabhas**, ensures deepening of democratic decentralisation.
- ❖ 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.**
- ❖ Gram Sabha will **approve the 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.
- ❖ Responsible for the **identification or selection of persons as beneficiaries** under the poverty alleviation and other programs;
- ❖ Every Panchayat at the village level shall be required to obtain from the **Gram Sabha a certification of utilization of funds by that Panchayat for the plans, programs and projects.**

# Deviation from Central Act: No Uniformity by the states

| States           | Land acquisition | Minor Water Bodies | Mines and minerals |
|------------------|------------------|--------------------|--------------------|
| Andhra Pradesh   | Mandal Panchayat | GP/MP/ZP           | Gram Panchyat      |
| Chhattisgarh     | Not specified    | Gram Sabha/GP      | Not Specified      |
| Gujarat          | Taluka Panchayat | Taluka Panchayat   | Gram Panchyat      |
| Himachal Pradesh | Gram Sabha       | Not specified      | Gram Sabha         |
| Jharkhand        | Gram Sabha       | Not specified      | Not Specified      |
| Madhya Pradesh   | Not specified    | Gram Sabha/GP      | Not specified      |
| Maharashtra      | Gram Sabha       | Gram Sabha         | GP/MP/ZP           |
| Odisha           | Zilla Panchayat  | Zilla Parishad     | Zilla Parishad     |
| Rajasthan        | Gram Sabha / PRI | Not Specified      | Gram Sabha / PRI   |
| Telangana        | Not specified    | Not specified      | Not Specified      |

# Challenges in Implementation of PESA

- ❖ *Lack of adoption of PESA in letter and spirit*
- ❖ *Lack of full implementation of provisions under PESA*
- ❖ *Lack of awareness about PESA amongst the tribal community*
- ❖ *Lack of awareness about PESA amongst the Implementing Officials*
- ❖ *Limited autonomy of Gram Sabha and panchayats at the lower level*
- ❖ *Lack of institutional mechanisms and enabling ecosystem*



## Powers of Governors in Scheduled Areas (relevant for PESA)

- ❖ The Governors of these States have the **power to make regulations for the peace and good governance of any Scheduled Area** particularly for the following purposes:-
  - (i) to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas,
  - (ii) to regulate the allotment of land to members of the Scheduled Tribes in such area,
  - (iii) to regulate the carrying on of business as money lender by persons who lend money to members of the Scheduled Tribes in such area.



# Governors and PESA in Scheduled Areas

- Proceedings of *Conference of Governors of the States* emphasized that Governors may urge the State Governments to have informed discussions on framing requisite local enactments to comply with the PESA Act and chart out the most optimal path for the good of the people.
- Fifth Schedule (Cl. 3) of the Constitution provides that the Governor of each State having Scheduled Areas should annually or whenever required so by the President make a report to the President, to keep the Union Government informed of the administration in Scheduled Areas.
- Analysis of submitted Reports of Governors in this regard lacked substance in reference to the PESA
- Governors were requested to consider issuing suitable guidelines/ instructions to all the PESA States having Fifth Schedule areas, for including a chapter in the Governor's Report, about implementation of PESA.

# Way Forward

- ❖ **Framing of the PESA rules by all the PESA States**
- ❖ **Conformity of the State laws with PESA Act in PESA States**
- ❖ **Strengthening Gram Sabha through framing of Institutional structure for enhancing accountability in the functioning of Gram sabhas**
- ❖ **The mandatory provision of issuance of utilization certificate and maintenance of Gram Kosh by the Gram Sabha should be attached with the further financial allocation and disbursement of funds.**
- ❖ **There need to be a dedicated PESA Cell in every PESA State. This State Cell should have a Gram sabha Facilitation Centre with an exclusive aim of strengthening the Institution of gram sabha.**

# Way Forward

- **The Gram Sabha should form various Committees** for effective implementation of PESA in the village
- Administrative Manual for PESA areas.
- Effective Capacity building of Gram Sabhas and their Functionaries for proper Implementation of PESA
- **Ownership Right over the Minor Forest Produce (MFPs) in the Schedule Areas must be enforced in the PESA Gram Sabha.**
- Development of **necessary sensitivities in PRI members and development functionaries** to ensure that Gram Sabhas in the Scheduled areas rightfully develop as Centres of Self Governance.
- **Awareness creation of the Tribals in Planning, Project Formulation and Programme Implementation.**



**Thank  
You**