

PESA Act, 1996

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 was enacted to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Local Self-Governance - Introduction

- Local self-governance interpreted as devolution of powers and functions of the government departments by the creation of Panchayat Raj institutions (PRIs) as a national framework of governance commenced with the passage of the 73rd Amendment to the Constitution.
- The States made suitable amendments to existing Panchayat laws where they existed or enacted legislation in accordance with the 73rd Amendment where they did not exist.
- The devolution of the powers and responsibilities to the PRIs were neither uniform nor at the same pace, but progressed steadily.
- The Scheduled Areas were exempted from the application of the 73rd Amendment, for which the Parliament enacted a separate law, Panchayat (Extension to the Scheduled Areas) Act, 1996 (PESA).
- PESA make sure that each tier of the Local Governance is independent and Panchayats at a higher level should not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha. Further, it also calls for creating the appropriate levels of Panchayats similar to the 6th Schedule area, where the Administrative boundaries are Autonomous enough for self-rule.

Objectives of PESA Act

The objectives of the Panchayats (Extension to the Scheduled Areas) Act, 1996 are as follows:

1. To extend the provisions of Part IX of the Constitution relating to the panchayats to the scheduled areas with certain modifications.
2. To provide self-rule for the bulk of the tribal population.
3. To have village governance with participatory democracy and to make the gram sabha a nucleus of all activities.
4. To evolve a suitable administrative framework consistent with traditional practices.
5. To safeguard and preserve the traditions and customs of tribal communities.

6. To empower panchayats at the appropriate levels with specific powers conducive to tribal requirements.
7. To prevent panchayats at the higher level from assuming the powers and authority of panchayats at the lower level of the gram sabha.

Features of PESA Act

The features (or the provisions) of the PESA Act are as follows:

- A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
- A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.
- 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.
- Every Gram Sabha shall-
 - approve of 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;
 - be responsible for the identification or selection of persons as beneficiaries under poverty alleviation and other programmes.
- Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of the utilisation of funds by that Panchayat for the plans, programmes and projects.
- The reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution. However, the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats. Further, all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes.

- The State Government may nominate persons belonging to such Scheduled Tribes, which have no representation in the Panchayat at the intermediate level or the Panchayat at the district level. But such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat.
- The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the 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. However, the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.
- Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level.
- The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to the grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas.
- The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction.
- While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-
 - the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;
 - the ownership of minor forest produce;
 - the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;
 - the power to manage village markets by whatever name called;
 - the power to exercise control over money lending to the Scheduled Tribes;
 - the power to exercise control over institutions and functionaries in all social sectors;
 - the power to control over local plans and resources for such plans, including tribal sub-plans;
- The State Legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.

- The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.
- Any provision of any law (relating to Panchayats in the Scheduled Areas) which is inconsistent with the provisions of this act shall cease to be in force at the expiry of one year from the date on which this Act receives the assent of the President. However, all the Panchayats existing immediately before such date shall continue till the expiry of their term, unless dissolved by the State Legislature sooner.

To Note - This Act received the assent of the President on 24 December 1996.

