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Panchayat Extension to Scheduled Areas (PESA) Act, 1996

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Why in News

The **Adivasi self-governance system** has **disappeared from most of the areas in Jharkhand**.

- During most of the time in history, most of the Adivasis (**India's tribal communities**) had their own federal governance system. However, the **administrative systems during the colonial period and after independence affected the Adivasi governance system** to a great extent.
- The **Panchayat Extension to Scheduled Areas (PESA) Act, 1996** was supposed to uphold the traditional decision-making process.

Key Points

- **Case Study - Tribal Governance System of Jharkhand:**

- Jharkhand was carved out as the **28th state of India** from the Southern part of Bihar in 2000.

This part was distinctively different from the northern part of Bihar in terms of geography and social composition.

- It has 32 different tribes, including the nine **Particularly Vulnerable Tribal Groups (PVTG)**.

According to Census 2001, **Santhal (34%), Oraon (19.6%), Munda (14.8%)** and **Ho (10.5%)** are among the major tribes in terms of numbers.

- The entire social system was organised into **three functional levels** across major tribal communities in the state.

The first one is at the village level; the second at the cluster of five-six village levels and the third at community levels.

- These decision-making processes were considered **people-centric and democratic**, although women were mostly not allowed to participate in such processes.
- They had their **own system of governance**, which was, **unlike the caste system, non-hierarchical**. Every tribal village had a village council as the basic unit for self-governance.
- These forums used to act as the decision-making bodies for all matters related to **administration, the Parliament and judiciary**.
 - The **administrative matters** were related to maintenance of village commons (such as lands, forests and water bodies), labour sharing, agriculture activities, religious events and festivals, etc.
 - The **parliamentary matters** were related to upholding and interpreting norms and unwritten laws and traditional values.
 - The **judiciary matters** were related to managing conflict, disciplinary actions, etc guided by unwritten norms and values.
- **Gradual Collapse of the System:** After the introduction of the **Bihar Panchayat Raj System (BPRS) in 1947**, these Adivasi traditional governance systems became weak.
 - BPRS was formed keeping the non-Adivasi areas in view.
 - As a result, due to the non-priority and neglect, the process of the traditional governance system was affected.
 - This was aggravated by industrialisation, displacement of Adivasis and urbanisation.

- **About Panchayat Extension to Scheduled Areas (PESA) Act, 1996:**

- To promote local self-governance in rural India, the **73rd constitutional amendment** was made in 1992.
- Through this amendment, a **three-tier Panchayati Raj Institution** was made into a law.

However, its application to the scheduled and tribal areas under **Article 243(M)** was restricted.

- After the **Bhuria Committee recommendations** in 1995, **Panchayat Extension to Scheduled Areas (PESA) Act 1996** came into existence for ensuring tribal self-rule for people living in scheduled areas of India.
- The PESA conferred the **absolute powers to Gram Sabha**, whereas **state legislature has given an advisory role** to ensure the proper functioning of Panchayats and Gram Sabhas.

The power delegated to Gram Sabha cannot be curtailed by a higher level, and there shall be independence throughout.

- The PESA is considered to be the **backbone of tribal legislation in India**.
- PESA recognises the traditional system of the decision-making process and stands for the **peoples' self-governance**.
- Following powers and functions have been provided to the Gram Sabhas:
 - **Right to mandatory consultation in land acquisition**, resettlement and rehabilitation of displaced persons.
 - **Protection of traditional belief**, the culture of the tribal communities
 - Ownership of **minor forest products**
 - Resolution of the **local disputes**
 - Prevention of **land alienation**
 - Management of village markets
 - Right to control production, distillation, and prohibition of liquor
 - Exercise of control over money-lending
 - Any other rights involving the Scheduled Tribes.

- **Issues Related to PESA:**

- The **state governments are supposed to enact state laws** for their Scheduled Areas in consonance with this national law.
 - This has resulted in the **partially implemented PESA**.
 - The partial implementation has worsened self-governance in Adivasi areas, like in Jharkhand.
- Many experts have asserted that PESA did not deliver due to the **lack of clarity, legal infirmity, bureaucratic apathy, absence of a political will, resistance to change in the hierarchy of power**, and so on.
- Social audits conducted across the state have also pointed out that in reality different developmental schemes were being **approved on paper by Gram Sabha**, without actually having any meeting for discussion and decision making.

- In India, most of the tribes are collectively identified under **Article 342 (1&2)** as **“Scheduled Tribes”**.
- Their right to self-determination is guaranteed by **Part X: The Scheduled and Tribal Areas – Article 244: Administration of Scheduled Areas and Tribal Areas**.
- That is, **Fifth and Sixth Schedules** of the Indian Constitution.
- The **Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996** or PESA.
- **The Tribal Panchsheel Policy**.
- **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** concerns the rights of forest-dwelling communities to land and other resources.

Way Forward

- PESA, if it is implemented in letter and spirit, will rejuvenate the dying self-governance system in the tribal area.
- This will also give an opportunity to correct the loopholes in the traditional governance system and make it a more gender-inclusive and democratic space.

Source: DTE