



Mains Marathon

Day 13: The Panchayats Extension to the Scheduled Areas Act (PESA), 1996 was enacted with a view to conserving local traditions and cultural practices of the tribal people. In this context discuss the key features of the PESA Act and what are the challenges in its implementation? (250 words)

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Approach / Explanation / Answer

- Start your answer by giving a brief about PESA
- Discuss the Key features of the PESA Act
- Discuss the issues in its implementation
- Conclude your answer by giving a way forward

Answer:

The **provisions of Part IX of the constitution** relating to the Panchayats are **not applicable to the Fifth Schedule areas**. However, the Parliament may extend these provisions to such areas, subject to such exceptions and modifications as it may specify. Under this provision, the Parliament has enacted the “Provisions of the Panchayats (Extension to the Scheduled Areas) Act”, 1996, popularly known as the PESA Act or the Extension Act.

At present (2019), ten states have Fifth Schedule Areas. These are: Andhra Pradesh, Telangana, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. All ten states have enacted requisite compliance legislations by amending the respective Panchayati Raj Acts.

Objectives of the PESA

- To extend the provisions of Part IX of the Constitution relating to the panchayats to the scheduled areas with certain modifications
- To **provide self-rule for the bulk of the tribal population**
- To have village governance with participatory democracy and to make the gram sabha a nucleus of all activities
- To **evolve a suitable administrative framework consistent with traditional practices**

Features of Panchayats Extension to the Scheduled Areas Act (PESA), 1996

- State **legislation on the Panchayats** in the Scheduled Areas **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 Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds** for the above plans, programmes and projects.
- The **reservation of seats in the Scheduled Areas in every Panchayat shall be in proportion to the population of the communities for whom reservation is sought** to be given under Part IX of the Constitution.
- The **state government may nominate 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.

Issues Related to PESA

Partial Implementation: 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.

Administrative Hurdles: 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.

Followed in Letter Rather than Spirit: 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.

Lack of Capacity Building: The Gram Sabha members lack the requisite training and skills to make judicious and fair use of resources.

Lack of state-specific laws: Out of total 10 PESA states only 6 out of them namely Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Rajasthan and Telangana have framed State-specific PESA Rules for their respective States to implement PESA.

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.
- The members of **Gram Sabha** be given the requisite training so that they can make better use of the resources allocated to them.
- The central govt should encourage state governments to frame state specific laws so that PESA becomes successful in its true spirit.
- There should be a new digital framework wherein the consent obtained by the Gram Sabha should be visible to all the people of that local area and to the members of Gram Sabha.
- The local administration should cooperate with the members of the Gram Sabha in their role of governance for the better implementation of laws, policies and programmes of the government for the people.

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