UNIT 4 PESA AND ITS IMPLEMENTATION

Structure
4. 1 Introduction
4. 2 Characteristics and Features of Scheduled Areas
4. 3 Tribes and Fifth and Sixth Schedule Areas
4. 4 Bhuria Committee Recommendations and 73rd Constitutional Amendment
4. 5 Provisions of the Panchayats (Extension to the Schedule Areas) Act, 1996 (PESA)
4. 6 Gram Sabha and its Role
4. 7 Ramifications of the Act 40 of 1996
4. 8 Operational Issues and Suggestions for Proper Implementation
4. 9 Let Us Sum Up
4.10 References and Suggested Readings
4.11 Check Your Progress - Possible Answers

4. 1 INTRODUCTION

The Constitution of India provides special protection to the tribals, who constitute more than eight per cent of the total population of India and are spread unevenly over different regions of the country. The tribal communities have remained comparatively isolated and they maintain an uninterrupted long tradition of well knit, cohesive social structure and value system, which is governed by their own customs and traditions. They also have their own self-governing local institutions, which are gradually becoming weak and inactive. In fact it is a challenging task to assimilate these tribal groups in the mainstream developmental effort without disturbing and destroying their cultural identity and socio-economic milieu.

In order to strengthen the local bodies and to provide self-rule for tribals, the Part IX of the Constitution has been extended through a Parliament Act called the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act No.40 of 1996), popularly known as PESA (herein after the term PESA will be used to denote the Extension Act). Prior to this Act, a committee was constituted to examine various dimensions of self - rule for tribals, the Constitutional requirements and to suggest how the provisions of Part IX of the Constitution could be extended to the Scheduled Areas.

This unit provides details about the Act known as PESA, its status and operational aspects including gaps and measures for strengthening the system.

After studying this unit, you should be able to

- Define self rule and fifth and Sixth Schedule Areas
- Describe the provision under PESA,1996
- Discuss the status of Conformity Panchayat Acts passed by the states
- Analyse operational issues and suggestions for proper implementation
4.2 CHARACTERISTICS AND FEATURES OF SCHEDULED AREAS

Historically, the idea of administration of underdeveloped areas originated with the British administration in the latter half of the 18th century. With the declaration of Regulation 1 of 1796, the concept of having a distinct and special arrangement essentially for the isolated tribal regions gained general acceptance and, in turn, special laws came into practice for administering these areas. The Government of India Act, 1919, had separate administrative arrangements for these areas and they were kept out of the purview of the legislatures. Subsequently, on the basis of the recommendations of the Simon Commission, the Government of India Act, 1935, provided for the declaration by an Order in Council of ‘Excluded Areas’ and ‘Partially Excluded Areas’ (Sections 91 and 92). Under the provisions, no act of the Federal Legislature of the Provincial Legislature would apply to these areas except on the direction of the Governor, who was empowered to make such exceptions and modifications, as he considered necessary.

The Secretary of State indicated broad principles as to which areas could be taken up under the provisions of the Sections 91 and 92 of the Government of India Act, 1935. As per the principles announced, for ‘Excluded Areas’, the selection must be based upon strict necessity and the range should be as limited as possible in scope consistent with the needs of the tribal population. Regarding the areas to be classified as ‘Partially Excluded Areas’, any area containing a preponderance of tribals which was of sufficient size to make possible the application of special legislation and special administrative treatment should qualify for inclusion. Keeping these principles in view, the Government of India recommended that the frontier and border regions of Assam, the Laccadive and Minicoy Islands and the Lahaul and Spiti areas in the Punjab should be declared ‘Excluded Areas’. Extensive tribal tracts in the provinces of Madras, Bombay, Bengal, United Provinces, Bihar, Central Provinces and Orissa should be declared as ‘Partially Excluded Areas’.

A sub-committee of the Constituent Assembly with A V Thakkar as its chairperson was constituted to examine the erstwhile arrangement of ‘Excluded and Partially Excluded’ and review the central issues relating to tribals and make recommendations on the subject. In this report, the sub-committee on Excluded and Partially Excluded Areas (other than Assam) observed that in the new democratic set up the problems of the tribals should be an integral part of the development of the Indian people as a whole. By and large, the recommendations of the committee were accepted and adopted in the Constitution and provision was included for separate administration of this Areas.

The President is empowered to declare any area, where there is a substantial population of tribal people, as a scheduled area under the Fifth Schedule or in Assam as a tribal area under the Sixth Schedule. The criteria for declaring any territory as ‘scheduled’ adopted by the sub-committee of the Constituent Assembly were: (a) preponderance of tribal population; (b) the stage of advancement and degree of assimilation; and (c) to a slightly lesser extent the susceptibility of these areas to special administrative treatment.

Subsequently, the Scheduled Areas and Scheduled Tribes Commission headed by U.N. Dhebar prescribed slightly different indicators. According to the
Democratic Decentralization commission, the criteria for determining a scheduled area under the Fifth Schedule may be based on four factors: (a) preponderance of tribals in the population, (b) compactness and reasonable size, (c) underdeveloped nature of the area, and (d) marked disparity in economic standards of the people. Similarly, under the provisions of Article 342 of the Constitution, the President is empowered to notify in consultation with the Governor of the State any tribe as a Scheduled Tribe. The criteria generally followed for classifying a tribal community as Scheduled Tribe are:

- Geographical isolation,
- Shyness of contact with community at large
- Distinct culture, and
- General backwardness
- Primitive traits

**States having Fifth Schedule Area**

![Map of India showing states with Fifth Schedule areas](image)
Articles 244 (1) and (2) in Part X of the Constitution of India describes about ‘Scheduled Areas’ and ‘Tribal Areas’ under the Fifth and Sixth Schedules respectively. It envisages a special system of administration for these areas. The Fifth Schedule is tribal dominated areas covering nine states of the country, namely, Andhra Pradesh, Chattisgarh, Gujarart, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

4.3 TRIBES AND FIFTH AND SIXTH SCHEDULE AREAS

The Constitution of India provides self-rule for the tribal communities. It ensures to safeguard their ethnic culture, common property resources and community control. Administratively, the scheduled areas are part of the states in which they are situated. The rationale for the Scheduled Areas has been to assist the tribal population in enjoying their existing rights unobstructed, and to develop the area as well as to promote the economic, educational and social progress of the
Democratic Decentralization

scheduled tribes. Besides, it will help in protecting their rights and interests and prevent their exploitation. The Governor has been given specific powers for the administration of Scheduled Areas. These powers are: (a) to modify central and state laws in their application to them, (b) to frame regulations for their peace and good governance and particularly for the protection of the rights of tribals in land, (c) allotment of land and, (d) their protection from moneylenders. However, in framing these regulations, the Governor is required to consult the Tribes Advisory Council (TAC) in the state established under the provisions of Part B, Para 4, of the Fifth Schedule of the Constitution. Further, the Governor is required to submit to the President a report annually or whenever so required regarding the administration of the Scheduled Areas in the State.

4.3.1 Fifth Schedule Areas

For the Fifth Schedule Areas, the scheme of administration visualizes a division of responsibility between the state governments and the union government. It is the duty of the state government to screen legislation unsuitable for extension to the Scheduled Areas. Moreover, the State Government is responsible for framing regulations relating to such items. The state government has also to implement special schemes pertaining to welfare and general development of Scheduled Tribes in the state. The union government extends guidance with regard to administration and provides additional funds for the betterment of the tribal community. Further, Article 339(2) of the Constitution provides:

“The executive power of the Union shall extend to the giving of directions to a state as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State”.

Part B, Para 4 of the Fifth Schedule envisages setting up of a Tribes Advisory Council (TAC) comprising not more than twenty members. Of these, three-fourth shall be the representatives of the scheduled tribes in the Legislative Assembly of the state. In case the number of representatives of the scheduled tribes in the Legislative Assembly is less than the number of seats in the TAC to be filled by such representatives, other members of these tribes shall fill the remaining seats. The Governor is empowered to make rules prescribing or regulating the number of members of the council, the mode of their appointment, the appointment of chairperson, the conduct of meeting and its procedure in general and other incidental matters. In fact, the TAC is an advisory body meant to act as an instrument for prevention of exploitation and discrimination. It facilitates governance of the scheduled areas in the larger interest of the tribes.

4.3.2 Sixth Schedule Areas

Paragraph 2 of the Sixth Schedule provides for the setting up of District Councils (DC) and Regional Councils (RC) in each autonomous district and region. The District Council is a body corporate having perpetual succession with a common seal, and the right to own and dispose off property, and with the right to sue and be sued. The DC will have not more than thirty members, of whom the Governor shall nominate not more than four persons. A simple majority elects members on the basis of adult suffrage from a single member constituency. The elected members of DC shall have a term of five years from the date of appointment for the first meeting of the Council. In order to give greater functional autonomy to the district councils, it has been well structured with three functional organs,
that is, the Legislature, the Executive and the Judiciary. The Regional Council for an autonomous region will be constituted separately in respect of all areas within such region notified by the Governor. The powers of regional councils and the district councils have been enumerated in the Schedule.

Now we have discussed about Scheduled areas and the fifth and sixth Schedule. Try to answer the following questions in the Check your progress-1

Check Your Progress 1

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are the criteria for declaring Scheduled Area?

2) What is Fifth Schedule?

4. 4 BHURIA COMMITTEE RECOMMENDATIONS AND 73RD CONSTITUTIONAL AMENDMENT

A high level committee chaired by D S Bhuria, MP, was constituted in June 1994 to examine how provisions of the 73rd Constitution Amendment could be extended to the Schedule areas and make recommendations. The rationale for inclusion of provisions as contained in Article 243M with regard to applicability of Part IX of the Constitution to Scheduled and Tribal Areas under Fifth and sixth Schedule Areas would be recognized and appreciated once it is accepted that the people in these areas need to be given protection to safeguard their interests.

The Committee, after discussing the issues emanating from the terms of reference and considering various aspects of the subject, submitted its report in January 1995.

Some important recommendations of the committee are listed below:
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- While passing the law under Article 243M (4) (b), important provisions of the 73rd constitutional amendment and certain unique characters of tribal societies and tribal areas should be kept in view since many tribal societies have their mode of living organizations, cultural mores, present-day predicament of exploitation, deprivation and marginalization. Many tribal communities have been living autonomously. They have exercised control over the natural resources moulding their institutions. The Gram sabhas and village councils have been vibrant institutions in the field of administration, religion, politics, economics, justice and son. Therefore, it is necessary to have in the Panchayati Raj framework a mix of traditional and modern institutions.

- While drafting the law, advantage should be taken of both the Fifth and Sixth Schedules. The Fifth Schedule should be the fountainhead of essential and beneficial legislation. The design and contents of the Sixth Schedule could serve as a relevant reference frame for a district within the broader canvas of the Fifth Schedule. However, ethnic, regional and other related variations should be given due consideration. The Sixth Schedule should be viewed in this context with such reform as is necessary.

- The Tribes Advisory Council, envisaged in the Fifth Schedule as a consultative body at the state level, needs to be reformed into an effective organization. The Chief Minister of the State should be its chairperson and its meetings should be held once in every three months.

- The Central Advisory Council at the Centre should be revived. It should serve as a sounding board for tribal policies and programmes and render advice in disputes between a state government and the Tribes Advisory Council or between the District Council and the Tribes Advisory Council. It advice should be normally be binding. The Prime Minister should chair its meetings and its members may be the ministers for welfare, home and rural development and the deputy Chairperson of the Planning Commission.

- The present day administrative boundaries may be considered for reorganization based on geographic, ethnic and demographic considerations and finalized within a couple of years.

- The lower functionaries of departments like police, excise, forest and revenue should be assigned a minimal role and should work under the control of concerned panchayats.

- The Gram sabhas should be allowed to exercise their customary role unhindered. Further, a gram sabha may have a traditional village council, which performs varied functions – religious, political, economic, judicial and so on, on its behalf. The gram sabha may nominate its executive council or village council, which may be a traditional body and may delegate to it the execution of development works.

- Constituencies may be delimited for election of members to the intermediate and district tier panchayats. The district level panchayat may be called Autonomous District Council (ADC).

- In certain districts the Scheduled Tribe population may be less than 50 per cent of the total population, but it may be concentrated in a part of parts of
the district, say in some blocks or sub-divisions. Sub-District Council may be constituted for such areas, called the Autonomous Sub-District Councils (ASDCs). ASDCs should be at a par with ADCs. However, this may be regarded as an interim arrangement, pending reorganization of administrative boundaries as suggested earlier.

- The organizational structure of an ADC should be based on the broad outline of Autonomous District Councils in the Sixth Schedule Areas. Some scope should be opened up through setting apart seats (not exceeding 5 in number) for nomination in the District Council of minority tribal communities, who cannot find representation through the election process. The nomination may be made in consultation with the Governor.

- Lok Sabha Scheduled Tribe MPs should be associated with the intermediate (block) panchayat and the district council. But the representation should not be restricted to Scheduled Tribe MLAs and even non-ST MLAs should be associated with both tiers.

- Since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the different tier panchayats therein should have a majority of Scheduled Tribe members. Further, both the chairpersons and vice-chairpersons should belong to STs.

- The Sixth Schedule confers powers of legislation and administration of justice on the district councils apart from the executive developmental and financial responsibilities. The districts in Scheduled Areas should adopt the Sixth Schedule format, but expand it to include subjects that are indicated in the Eleventh Schedule of the Constitution.

- The legislative powers of the autonomous district councils in the Fifth Schedule Areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments. In so far as justice is concerned, the committee has emphasized that a traditional jury-based legal system evolved by tribal societies should be recognized and continue to function. There should be no police interference in cases not involving heinous offences. Such cases should be confined to the gram sabha domain. As far as development functions are concerned, the functions enumerated in the Sixth Schedule as well as in the Eleventh Schedule should be discharged by the ADCs.

- The panchayats in these areas may receive funds under Articles 243H and 243I and funds as per the first provision to Article 275(I) should continue to be available normally.

- For the purposes mentioned in the first proviso to Article 275(I) funds received from sources other than the panchayats’ own, should be placed in ‘charged’ category in the respective government’s budgets as opposed to ‘voted’ category. This will enable funds to remain fully available for purposes related to tribal interest, without fear of misutilisation or diversion.

- To prevent wrong financial practices occurring in the tribal sub-plan field, the tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the ADCs for distribution among...
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the panchayats in the district. Moreover, to the extent possible, the central and state governments should device procedures for direct allotment of funds to the ADCs.

- All government functionaries of institutions concerned with panchayats in a scheduled area are located within its jurisdiction should be under its control.

- As per the provision in the Sixth Schedule, the governor may appoint a commission to examine and report on all matters relating to the administration of Autonomous District Councils. Representation should be given to Scheduled Tribes in the commission.

- The TACs and ADCs in the scheduled areas should review the relevance of the existing laws. Action to exclude irrelevant laws should be completed within a stipulated period of about two years.

- The law passed by Parliament will supersede such and any other related laws that have been enacted in pursuance of the 73rd and 74th Constitution Amendment Acts.

- The process of scheduling of tribal areas in the country commenced earlier has remained incomplete. It is necessary that the remaining tribal pockets should be included in the scheduled areas.

- The framework of the Sixth Schedule should be looked at afresh in the northeastern region in the light of suggestions made by the committee.

Evidently, the committee looked into various facets of the tribal situation which could be considered for drafting legislation. The suggestions made by the committee assimilate various provisions of the Fifth and the Sixth Schedules and the 73rd Constitution Amendment. A special treatment has been given to the social, political, cultural and economic aspects of tribal life. The committee has taken note of the tribal areas that do not find place either in the Fifth or the Sixth Schedules of the Constitution. The recommendations of the committee paved the way for drafting the Extension Act.

Now we have discussed about recommendations made by Bhuria Committee. Try to answer the following questions in the Check your progress-2

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) **What are main recommendations of the Bhuria Committee?**

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4.5 PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULE AREAS) ACT, 1996 (PESA)

According to the provisions of the 73rd amendment, introducing Part IX for a panchayat structure in country is not applicable automatically to these areas rather it is envisaged to bring through special provisions and modifications by subsequent legislations. In order to do so, an Act was passed by Parliament titled “The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; no. 40 of 1996, on 24th December, 1996. This Act is popularly known as PESA. This Act envisages providing Self-governance to tribes. It takes care to preserve customary laws, social and religious practices and traditions of tribes. It also provides self-management by tribes. This is a historical piece of legislation. It has some distinct features. The provisions can be classified into two categories, that is, mandatory and general provisions. The mandatory provisions are compulsory.

4.4.1 Mandated Provisions

- Any legislation on the Panchayats for the tribal areas shall be in consonance with the customary law, social and religious practices and traditional practices of management of community resources.

- A village shall ordinarily consist of a habitation, a group of habitations, a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditional and customs.

- Establishment of Gram Sabha for every village comprising persons whose names figure in the electoral rolls.

- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and to settle local disputes by customary methods.

- The gram sabha should identify and select beneficiaries for poverty alleviation and other programmes.

- Every village panchayat must obtain a certificate of utilization of funds from the gram sabha for the projects and programmes of social and economic development under the state poverty alleviation and other programmes.

- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.

- Panchayats at the appropriate level have to manage and plan for minor water bodies in these areas.

- Grant of prospecting license or lease of land for mining, minor minerals can be given only on the recommendations of the gram sabha or the panchayat at the appropriate level.
Democratic Decentralization

- Grant of concessions for the exploitation of minor minerals by auction has to be given on the recommendations of the gram sabha or the panchayat at the appropriate level.

- Besides these powers and functions, the gram sabha or the panchayats at the appropriate level shall have the following mandatory powers, (i) to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant; (ii) the ownership of minor forest produce and management of all types of village markets; (iii) to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land of a scheduled tribes in scheduled areas; (iv) to exercise control over money lending to tribes; and control institutions and functionaries working in the social sectors in the area; (v) to exercise control over local plans and their resources, including tribal sub-plans.

- Reservation of seats at all tiers of panchayats for the scheduled tribes shall not be less than one-half of the total number of seats and reservation for other communities indicated in Part IX of the constitution shall be one the basis of the proportion of their population.

- The post of chairperson at all panchayat levels will be reserved for the scheduled tribes.

- At the intermediate or district level panchayats, in the case of scheduled tribes which have no representation the state government shall nominate a person to represent such tribes but the number of persons to be nominated cannot exceed one-tenth of the total elected members in the panchayat.

- While devolving powers and authority to panchayats, it should be ensured that panchayats at the higher level do not assume the powers and authority of any lower level panchayat or the gram sabha.

- The pattern of the sixth schedule to the constitution has to be maintained while designing the administrative arrangements for the district level panchayat.

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### 4.6 GRAM SABHA AND ITS ROLE

According to the provisions of the Act, 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. Moreover, a village shall ordinarily consist of a
habitation or group of habitation or a hamlet or a group of hamlet comprising a community and managing its affairs in accordance with traditions and customs. In the Act, definition of village has been given which is not available in the 73rd amendment.

It is striking to note that Gram Sabha has been empowered to play a prominent role. Such specific role of Gram sabha has not been provided in the main 73rd Act. Therefore, it is highly significant that decision making rest with the people and it will function as forum for deliberative democracy.

The Gram Sabha has been assigned with the following functions:

- To 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;
- Be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
- Establishment of Gram sabha for every village comprising persons whose names figure in the electoral rolls.
- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identify of the people, community resources and to settle local disputes by customary methods.
- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.

Now we have discussed about mandatory provisions of PESA and about Gram Sabha. Try to answer the following questions in the Check your progress-3

Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are the mandatory powers of Gram Sabha or Panchayats in the PESA Act of 1996?

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2) Define Gram Sabha? What are its specific powers?

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4.7 RAMIFICATIONS OF THE ACT 40 OF 1996

In the extention Act the gram sabha has been mandated to deal with plans and programmes and projects for social and economic development and selection of beneficiaries for all village panchayat programmes. But this is likely that power may be misused by the politicians or the bureaucracy in the implementation / management of the development programmes. It would be better if provision had been made that the identification of schemes and their location should be left to the Gram Sabha.

Another provision enjoins upon the state legislature to devolve powers and authority on the panchayats to enable them to be ‘institutions of self-government’, it is expected that the powers assigned to the panchayats, other than those already specified in the act, would be specific and unambiguous. Panchayats should not be treated as merely executing ‘agencies’. Sufficient freedom and autonomy should be given to them to enable them to take their own decisions and manage their own affairs and to have identity as effective units of self-government.

Further, the provision tries to ensure that the process of devolution is based on the cardinal principle that what is appropriate for a given tier should be decided by that tier and not by a higher level. Thus, the legislation must prevent the higher level from the assuming the responsibility of lower level or of the gram sabha. Therefore, for a smooth operation at each panchayat level a mechanism for coordination among them must be evolved and a package of required and powers and functions should be granted. To ensure further that the panchayats are manned by the tribals, all positions of chairpersons of panchayats at all levels are to be reserved for tribals.

The Administrative arrangements at the district level panchayat in these areas may adopt the pattern of ADCs prevailing in the Sixth Schedule areas. The Sixth Schedule confers the autonomous councils apart from the executive, developmental and financial powers. This means that the district level panchayats will have enhanced power and authority similar to ADCs in addition to the powers devolved by the 73rd Constitution Amendment Act. Thus the powers of the district panchayat in the scheduled areas will be greater compared to their counterparts in the unscheduled areas of the States. The Extension Act has better features than the framework provided under Part IX of the Constitution. Moreover, the blending of these frameworks has certain advantages compared to the provisions of the 73rd Constitution Amendment Act, which have many limitations.
The PESA has lot of ramifications and require recasting of certain policies, which has direct bearing upon. Among the laws that attracts immediate attention are: (i) Land Acquisition Act, 1894, (ii) Mines and Minerals (Development and Regulation) Act, 1957, (iii) Indian Forest Act, 1927, (iv) The Forest Conservation Act, 1980, (v) The Indian Registration Act. Intervention is also required in the area of Social audit U/s 4(f), Prohibition U/s 4 (m) (i), Ownership of Minor Forest Produce U/s 4(m) (ii), Land Alienation U/s 4 (m) (iii); Regulation of Money Lending U/s 4 (m) (iv); Control of Functionaries U/s 4 (m) (vi). In so far as the policies and central schemes are concerned, certain policies pertaining to waste lands, water resources and extraction of minerals from lands in Schedule V Areas do not seem to reflect the intent and purpose of PESA. There were occasions, it was observed, that these policies while implementing is given rise to confrontation between the tribal people and the administration. Therefore suitable devise has to be address.


**4.8 OPERATIONAL ISSUES AND SUGGESTIONS FOR PROPER IMPLEMENTATION**

**4.8.1 Operational Issues**

The operational issues and gaps relating to PESA are as follows:

i) The Act is applicable to the Fifth Schedule Areas only and does not cover the Sixth Schedule Areas. Moreover, there are some tribal areas in the country not covered by any of the two schedules. What will be the organizational framework of local governance for tribals in these areas? The limitations of the applicability of the Extension Act will prevent these tribal people from taking advantage of the special constitutional provisions mentioned above.

ii) The Sixth Schedule Areas, which are beyond the purview of the Extension Act, have the structure of autonomous district areas which are not necessarily co-terminus with the administrative district boundaries. They do not have any statutory body at the intermediate or at the village level. In some places, at the sub-district level, there is neither a democratic nor traditional structure. Consequently, a void is created at the grassroots level and in the absence of such grassroots structure, no organic link can be maintained between the lower and higher level bodies.

iii) Under the provisions of the Fifth Schedule, a Tribal Advisory Council (TAC) is to be constituted to advice on matters pertaining to the welfare and advancement of the Scheduled tribes in the state. A question arises whether the TAC will obstruct the growth of the Panchayati Raj structure at the local level because if the functional domain of panchayats is curtailed they may perceive the TAC as a rival center. Secondly, the panchayats will be the creation of the state legislature and to some extent the administrative control over them will be in the hands of the state government. In such a situation
Democratic Decentralization

will the advice and guidance of the TAC be binding upon the Panchayats? The Panchayats might receive two types of instructions from these two bodies which occasionally may be contradictory. What will be the linkage between TAC and panchayats? A view is being expressed that when the new dispensation is established the TAC may become irrelevant. However, if the TAC must continue as only an advisory body what would be the modifications required in its structure and functioning.

iv) While passing the State Panchayat Acts, it should be seen that they are in consonance with the custom, society and religion of the tribals concerned. These aspects vary among tribes within each state. Will it be possible to assimilate all types of practices in a single piece of legislation? It may not be possible to have different laws for each tribe within a district or state. Furthermore the customary laws are not properly codified and documented.

v) Section 4 (b) defines a village as “ordinarily consisting 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”. It means every community will have a separate village. In a village, several communities may be found spread over different geographical areas. It may be difficult to demarcate a village in this way. In this situation the revenue village may not be co-terminus with the social village. The term ‘community’ is not clearly defined in the Act and therefore, it would be difficult to delimit a village. This will certain lead to complications. Usually in tribal areas hamlets are more common than big villages. Therefore, declaring each hamlet as a village panchayat area may not be economically viable.

vi) Reservation of seats has been provided to all communities as per the provisions of Part IX of the Constitution to SCs and STs and one-third of all seats are reserved for women. Regarding reservation for backward class communities the state legislature must decide. Once again, the term community has been used in its wider sense which includes other than tribal community. When a village is defined on the basis of a community, the question of other communities living in it does not arise. If so, then reservation is only applicable to SCs and in some cases backward classes and also women. Another question is whether schedule castes and women can be considered as communities for reservation purposes.

vii) It is mandated that chairpersons at all panchayat levels shall be reserved for Scheduled Tribes. Which means the office of chairperson will permanently be reserved for STs. They may go against the judicial verdict on the subject. Part IX of the Constitution contemplates that the reservation of offices will be allotted by rotation to different panchayats at each level. At a lower level it may be viable but at the district level it may cause some difficulty. There are certain districts, which are not tribal majority districts, and tribals do not constitute more than 50 per cent of the total population of the district. In these districts permanent reservation of poses for tribals will be generally resented.
Under Section 4 (O) of the Act, the Panchayat at the district will be designed on the lines of the autonomous district council under the Sixth Schedule. The ADC has legislative and judicial functions in addition to executive powers. If only the tribal district panchayats are given legislative and judicial functions, anomalies in the district panchayats within a state will evidently grow. The ADC is empowered to appoint judges for the administration of justice in their areas and they can raise their own police force. These provisions must be examined carefully while extending such powers and authority under the Extension Act. The ADC has limited development functions compared with the Eleventh Schedule of the Constitution. Many states have not devolved powers and functions to panchayats as per the Eleventh Schedule. If the state governments are not willing to devolve powers, authority and responsibilities to local government then the spirit of the 73rd Amendment will be violated.

4. 8.2 SUGGESTIONS FOR PROPER IMPLEMENTATION OF PESA

- The provisions of PESA are enabling framework for preventing exploitation of tribal and for providing good governance and self-rule in Schedule V Areas. Implementation of PESA is a direct responsibility of state legislature and, therefore, inconsistencies in Conformity Act should be modified and a comprehensive Panchayat law removing inconsistencies has to be brought.

- The state may be impressed upon the examination comprehensively other relevant state laws for their inconsistencies and suitably amend the laws, rules, regulations and procedure in force which are at variance with the provisions of PESA. The states, where PESA is applicable should formulate rules and regulations which is pending for along time. This will give effect to better implementation of provisions of PESA.

- It has been found that the awareness about the provisions of PESA is very low among all stakeholders that include officials, elected representatives and tribals. Therefore, there is a need for capacity building of officials and elected representatives and awareness building of the common people. It requires identifying training institutes and developing training modules to cover all stakeholders in the PESA Areas. Advocacy should be prominently introduced in this area. The Some best practices in the implementation of PESA have also been observed. These best practices should be documented and further be disseminated for replication in other parts.

- The Ministry of Panchayati Raj has to play an important role in the implementation of the provisions of PESA in letter and spirit. The Government of India should issue a specific direction in accordance with the powers to issue directions under Proviso 3 Part III of the fifth Schedule. The Government of India should also prepare model guidelines for framing rules under PESA, which should be circulated among the states to frame their respective rules at the earliest.

Now we have discussed about gaps in PESA and suggestions for improving the gaps. Try to answer the following questions in the Check your progress-4.
Check Your Progress 2

Note: a) Write your answer in about 50 words

b) Check your answer with possible answers given at the end of the unit

1) What are operational gaps in PESA?

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2) Suggest how to improve the situation? How PESA can become meaningful?

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4.9 LET US SUM UP

In the above unit, we read about the features and characteristics of Scheduled areas, about fifth and sixth scheduled areas, about Bhuria Committee and PESA, 1996. We discussed about the gaps in the PESA Act and also the suggestions made in regards to its improvement.

4.10 REFERENCES AND SUGGESTED READINGS


Debates on the Fifth and Sixth Schedules, Indian Social Institute, New Delhi.


### 4.11 CHECK YOUR PROGRESS-POSSIBLE ANSWERS

**Check Your Progress 1**

1) **What are the criteria for declaring Scheduled Area?**

   **Ans.** According to the commission, the criteria for determining a scheduled area under the Fifth Schedule may be based on four factors: (a) preponderance of tribals in the population, (b) compactness and reasonable size, (c) underdeveloped nature of the area, and (d) marked disparity in economic standards of the people.

2) **What is Fifth Schedule?**

   **Ans.** The Fifth Schedule is tribal dominated areas covering nine states of the country, namely, Andhra Pradesh, Chattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan.

**Check Your Progress 2**

1) **What are main recommendations of the Bhuria Committee?**

   **Ans.** Some important recommendations of the Bhuria Committee are listed below:

   - While passing the law under Article 243M (4) (b), important provisions of the 73rd constitutional amendment and certain unique characters of tribal societies and tribal areas should be kept in view since many tribal societies have their mode of living organizations, cultural mores, present-day predicament of exploitation, deprivation and marginalization.

   - While drafting the law, advantage should be taken of both the Fifth and Sixth Schedules.

   - The Tribes Advisory Council, envisaged in the Fifth Schedule as a consultative body at the state level, needs to be reformed into an effective organization.

   - The Central Advisory Council at the Centre should be revived. It should serve as a sounding board for tribal policies and programmes and render advice in disputes between a state government and the Tribes Advisory Council.
Democratic Decentralization

- The present day administrative boundaries may be considered for reorganization based on geographic, ethnic and demographic considerations and finalized within a couple of years.

- The lower functionaries of departments like police, excise, forest and revenue should be assigned a minimal role and should work under the control of concerned panchayats.

- The Gram sabhas should be allowed to exercise their customary role unhindered.

- Constituencies may be delimited for election of members to the intermediate and district tier panchayats.

- In certain districts the Scheduled Tribe population may be less than 50 per cent of the total population, but it may be concentrated in a part of parts of the district, say in some blocks or sub-divisions. Sub-District Council may be constituted for such areas, called the Autonomous Sub-District Councils (ASDCs).

- The organizational structure of an ADC should be based on the broad outline of Autonomous District Councils in the Sixth Schedule Areas.

- Lok Sabha Scheduled Tribe MPs should be associated with the intermediate (block) panchayat and the district council

- Since the Scheduled Areas and Tribal Areas are expected to have a majority of tribal population, the different tier panchayats therein should have a majority of Scheduled Tribe members.

- The Sixth Schedule confers powers of legislation and administration of justice on the district councils apart from the executive developmental and financial responsibilities.

- The legislative powers of the autonomous district councils in the Fifth Schedule Areas have been proposed more or less on the same lines as in the Sixth Schedule, with some amendments

- The panchayats in these areas may receive funds under Articles 243H and 243I and funds as per the first provision to Article 275(1) should continue to be available normally.

- For the purposes mentioned in the first proviso to Article 275(1) funds received from sources other than the panchayats’ own, should be placed in ‘charged’ category in the respective government’s budgets as opposed to ‘voted’ category.

- To prevent wrong financial practices occurring in the tribal sub-plan field, the tribal sub-plan funds (whether relating to state plan or special central assistance or any other) pertaining to different sectors of development should be quantified and placed at the disposal of the ADCs for distribution among the panchayats in the district.
• All government functionaries of institutions concerned with panchayats in a scheduled area are located within its jurisdiction should be under its control.

• As per the provision in the Sixth Schedule, the governor may appoint a commission to examine and report on all matters relating to the administration of Autonomous District Councils.

• The TACs and ADCs in the scheduled areas should review the relevance of the existing laws.

• The law passed by Parliament will supersede such and any other related laws that have been enacted in pursuance of the 73rd and 74th Constitution Amendment Acts.

• The process of scheduling of tribal areas in the country commenced earlier has remained incomplete.

• The framework of the Sixth Schedule should be looked at afresh in the northeastern region in the light of suggestions made by the committee.

Check Your Progress 3

1) **What are the mandatory powers of Gram Sabha or Panchayats in the PESA Act of 1996?**

**Ans.** The Gram sabha or the panchayats at the appropriate level shall have the following mandatory powers, (i) to enforce prohibition or to regulate and restrict the sale and consumption of any intoxicant; (ii) the ownership of minor forest produce and management of all types of village markets; (iii) to prevent alienation of land and to take appropriate action to restore any unlawfully alienated land of a scheduled tribes in scheduled areas; (iv) to exercise control over money lending to tribes; and control institutions and functionaries working in the social sectors in the area; (v) to exercise control over local plans and their resources, including tribal sub-plans.

2) **Define Gram Sabha? What are its specific powers?**

**Ans.** According to the provisions of the Act, 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. Moreover, a village shall ordinarily consist of a habitation or group of habitation or a hamlet or a group of hamlet comprising a community and managing its affairs in accordance with traditions and customs. In the Act, definition of village has been given which is not available in the 73rd amendment

The Gram Sabha has been assigned with the following functions:

• To 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;

• Be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes.
Democratic Decentralization

- Establishment of Gram sabha for every village comprising persons whose names figure in the electoral rolls.

- Empowering the gram sabha to safeguard and preserve the traditions, customs and cultural identity of the people, community resources and to settle local disputes by customary methods.

- The acquisition of land for development projects and rehabilitation or resettlement of persons affected by such projects in the scheduled areas has to be done in consultation with either the gram sabha or the panchayat at the appropriate level. Planning and implementation of the projects will be coordinated at the state level.

Check Your Progress 4

1) **What are operational gaps in PESA?**

**Ans.** The operational issues and gaps relating to PESA are as follows:

i) The Act is applicable to the Fifth Schedule Areas only and does not cover the Sixth Schedule Areas.

ii) The Sixth Schedule Areas, which are beyond the purview of the Extension Act, have the structure of autonomous district areas which are not necessarily co-terminus with the administrative district boundaries.

iii) Under the provisions of the Fifth Schedule, a Tribal Advisory Council (TAC) is to be constituted to advice on matters pertaining to the welfare and advancement of the Scheduled tribes in the state.

iv) While passing the State Panchayat Acts, it should be seen that they are in consonance with the custom, society and religion of the tribals concerned. These aspects vary among tribes within each state.

v) Section 4 (b) defines a village as “ordinarily consisting 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”. It means every community will have a separate village.

vi) Reservation of seats has been provided to all communities as per the provisions of Part IX of the Constitution to SCs and STs and one-third of all seats are reserved for women.

vii) It is mandated that chairpersons at all panchayat levels shall be reserved for Scheduled Tribes.

viii) Under Section 4 (O) of the Act, the Panchayat at the district will be designed on the lines of the autonomous district council under the Sixth Schedule.

2) **Suggest how to improve the situation? How PESA can become meaningful?**

**Ans.** Few of the suggestions through which PESA can be become meaningful are as follows:

- Inconsistencies in Conformity Act should be modified and a comprehensive Panchayat law removing inconsistencies has to be brought.
• The states, where PESA is applicable should formulate rules and regulations which is pending for along time. This will give effect to better implementation of provisions of PESA.

• It has been found that the awareness about the provisions of PESA is very low among all stakeholders that include officials, elected representatives and tribals. Therefore, there is a need for capacity building of officials and elected representatives and awareness building of the common people.

• The Ministry of Panchayati Raj has to play an important role in the implementation of the provisions of PESA in letter and spirit.