



PESA Act

For Prelims: Provisions of PESA Act, Article 244(1), Tribal Policy in India

For Mains: PESA Act Related Issues, Benefits of implementing PESA Act

Why in News?

Electoral Parties are trying to woo tribals in Gujarat by making promises to strictly implement the [Panchayat Extension to Scheduled Areas \(PESA\) Act, 1996](#).

- Gujarat notified the State PESA Rules in January 2017 and made them applicable in 4,503 gram sabhas under 2,584 village panchayats in 50 tribal talukas in eight districts of the state.
- However, the Act has not been **enforced in letter and spirit**.
- Six states (Himachal Pradesh, Andhra Pradesh, Telangana, Rajasthan, Gujarat, Maharashtra) have formed the PESA laws, and Chhattisgarh would become the seventh state if the rules are enacted.

What is the PESA Act?

- **About:**
 - The PESA Act was enacted in 1996 “to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas”.
 - **Part IX, comprising Articles 243-243ZT** of the Constitution, contains provisions **relating to municipalities and cooperative societies**.
- **Provisions:**
 - Under the Act, **Scheduled Areas are those referred to in Article 244(1)**, which says that the provisions of the **Fifth Schedule shall apply to the Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram**.
 - The Fifth Schedule **provides for a range of special provisions for these areas**.
 - Ten states — Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana — have notified Fifth Schedule areas that cover (partially or fully) several districts in each of these states.
- **Objectives:**
 - To **ensure self-governance through [Gram Sabhas \(village assemblies\)](#)** for people living in the **Scheduled Areas**.
 - It recognises the **right of tribal communities, who are residents of the [Scheduled Areas](#)**, to govern themselves through their own systems of self-government, and also acknowledges their traditional rights over natural resources.
 - Empowers Gram Sabhas to play a key role in approving development plans and controlling all social sectors.

What is the Significance of Implementing the Act?

- **Democratic Decentralisation:** PESA empowers gram sabhas to play a key role in approving development plans and controlling all social sectors. This includes management of:

- Resources over jal, jangal, zameen (water, forest and land)
- **Minor forest produce**
- Human resources: Processes and personnel who implement policies
- Managing local markets
- Preventing land alienation
- Regulating intoxicants among other things
- **Preserving Identity:** The powers of gram sabhas include maintenance of cultural identity and tradition, control over schemes affecting the tribals, and control over natural resources within the area of a village.
- **Conflict Resolution:** The PESA Act thus enables gram sabhas to maintain a safety net over their rights and surroundings against external or internal conflicts.
- **Public Watchdog:** The gram sabha would have the powers to monitor and prohibit the manufacturing, transport, sale and consumption of intoxicants within their village limits.

What are the 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 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.

How are Tribals and their Rights Protected in India?

- 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: IE

