

IMPLEMENTATION OF PANCHAYAT EXTENSION (SCHEDULED AREAS) ACT 1996 IN GUJARAT**Swati Sharma**

Assistant Professor, Lloyd Law College

ABSTRACT

The Panchayats Extension to Scheduled Area (PESA) Act of 1996 was enacted with the objective of granting self-governance to tribal communities residing in the fifth scheduled areas of India. However, its implementation in Gujarat, where a significant Bhil tribe population exists, has been limited over the past two decades. This paper critically examines the reasons behind the inadequate attention given to the PESA Act in Gujarat and emphasises the importance of addressing this issue for policy makers and senior administrators. This paper analyses the implementation of the Panchayat Extension (Scheduled Areas) Act 1996 in Gujarat. It assesses its impact on local governance, socio-economic development, and the rights of Scheduled Tribes. Using literature review, government reports, and primary data from surveys, the study examines the establishment of gram panchayats and community participation, with a focus on Scheduled Tribes.

Keywords: PESA, Bhil Tribe, SCs, STs, Gram Panchayat etc.

INTRODUCTION

The Panchayats Extension to Scheduled Area (PESA) Act 1996 was passed with the aim of granting self-governance to tribal communities in the fifth scheduled areas of India. The Panchayat (Extension in Schedule Area) Act of 1996 aims to provide decentralised governance in tribal areas through the incorporation of customary laws, social practices, and traditional resource management practices. However, in the past two decades, there have been few efforts by the government to implement this Act in Gujarat, where a significant portion of the population belongs to the Bhil tribe. This paper aims to understand why the Act has not received much attention in Gujarat and to bring this issue to the attention of policy makers and senior administrators.

BACKGROUND

Article 40 of the Indian Constitution establishes the Panchayat Raj system as a means of self-governance in the country. However, the 73rd and 74th amendments, which aimed to further democratic decentralisation, did not apply to scheduled areas (specifically, the fifth and sixth schedule areas). As a result, the Parliament was required to pass separate legislation for these areas, which it did through the Panchayats Extension to Scheduled Area (PESA) Act of 1996. This Act, based on the recommendations of the Bhuria Committee Report of 1995, called for all states with scheduled areas to enact legislation consistent with PESA within a year. The state of Andhra Pradesh passed its own PESA Act in 1998 and implemented PESA Rules in 2011, establishing the Gram Sabha as the central authority for development in scheduled areas and granting it the power to approve socio-economic plans and projects and to consult on land acquisition and settlement or rehabilitation related to development projects. However, there have been reports of the Gram Sabha's role being undermined by bureaucratic institutions and the slow implementation of PESA being attributed to legal challenges. Despite these challenges, the PESA Act and the role of the Gram Sabha remain important for preserving the traditional systems of self-governance and the unique social, cultural, economic, and political systems of tribal communities.

BHURIA COMMITTEE REPORT 1995

The P.V. Narasimha Rao government wanted to expedite the process as quickly as possible. The P.V. Narasimha Rao government established a committee, headed by Mr. Dileep Singh Bhuria, in June 1994 to develop plans for implementing structures similar to Panchayati raj institutions in tribal and scheduled areas and to define their powers. The committee, which submitted its report in January, did not include Jayant Rongpi, a tribal leader and MP, nor did it consider ongoing autonomy struggles in the northeast and Jharkhand. As a result, the committee's recommendations for the powers of tribal autonomous district councils fell short of what had been achieved

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through struggle by the ASDC¹. The Bhuria Committee proposed a three-tiered system of self-governance in tribal areas, including Gram Sabhas, Gram Panchayats, and block or taluk-level bodies, as well as an elected autonomous district council at the district level with legislative, executive, and judicial powers. The committee also generally proposed that scheduled and tribal areas should have adequate powers to address issues such as land alienation, deforestation, and displacement, but did not offer concrete measures to empower the proposed institutions. In 1995, based on the report of the Bhuria Committee, Parliament passed "The Provisions of the Panchayat (Extension to the Scheduled Areas) Act, 1996," also known as the PESA Act. This Act extends Part IX of the Constitution, with certain modifications and exceptions, to Fifth Schedule areas in ten states: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana. These scheduled areas in these ten states are located in 108 districts, 45 of which are fully covered and 63 of which are partially covered.

FIFTH SCHEDULE ARTICLE 244 (1)

Article 244² (1) of the Constitution states that the provisions of the Fifth Schedule, which pertain to the administration and control of scheduled areas and tribes in states other than Assam, Meghalaya, Tripura, and Mizoram, shall apply. The main purpose of these specific provisions in the Fifth Schedule, particularly those outlined in paragraph 5, is to protect the rights and interests of tribals in regards to their land, economy, and customs; to preserve their community traditions; and to promote faster socio-economic development in scheduled areas.

Under the Fifth Schedule of the Constitution, the Governor of each state with scheduled areas has certain powers and duties for the administration and control of these areas. The executive power of the state extends to these scheduled areas. The Fifth Schedule provides for the following: a report by the Governor to the President regarding the administration of scheduled areas; the appointment of a Tribes Advisory Council by the Governor; the power of the Governor to regulate the application of state laws and Acts of Parliament to scheduled areas; the power of the Governor to make regulations for the peace and good government of scheduled areas; and the ability of the President to declare an area to be a scheduled area by order.

PROVISION OF PESA ACT

Under the PESA Act,³ Gram Sabhas and Panchayats have been given significant powers, including the approval of plans, programs, and projects for social and economic development, the requirement for consultation before the acquisition of land in scheduled areas for development projects and before resettling or rehabilitating affected persons, the need for recommendations before granting prospecting licences or mining leases and concessions for the exploitation of minor minerals in scheduled areas. Panchayats and Gram Sabhas in scheduled areas have been given the authority necessary to function as self-governance institutions. Overall, the PESA Act seeks to protect the tribal population from exploitation by empowering Gram Sabhas and Gram Panchayats as centres of self-governance, with a particular focus on empowering Gram Sabhas in a way that has not been granted by any other act in any state.

"Three committees have been formed to assist the Gram Sabha: the Peace Committee, the Resource Planning and Management Committee, and the Vigilance and Monitoring Committee. Each of these committees should consist of 10 members elected by the Gram Sabha."

¹ "The Fight for Tribals' Rights." http://www.archive.cpmil.org/liberation/year_1996/august/feature.htm. Accessed 10 Jan. 2023.

² "Article 244(1) - Constitution of India." [https://www.constitutionofindia.net/constitution_of_india/article_244_1_/articles/Article%20244\(1\)](https://www.constitutionofindia.net/constitution_of_india/article_244_1_/articles/Article%20244(1)).

³ "The Provisions of the Panchayats (Extension To the" <https://Legislative.Gov.In/Sites/Default/Files/A1996-40.Pdf>.

FUNCTIONS OF GRAM SABHA IN GUJARAT

- Gram Sabha⁴ shall ensure to safeguard natural resources in the scheduled area over which it enjoys traditional rights including water, forest, land and minerals as per the local tradition and the spirit of the law of the government.
- "Ensure that land acquisition follows the guidelines outlined in the Rights to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013⁵ in order to prevent land alienation and properly regulate land acquisition."
- There is a system in place for regulating the interest rates on money lending. If there is a disagreement, the peace committee has the authority to resolve the issue."
- "Ensure the proper management of the village Haat, including the maintenance of physical facilities and the provision of accurate price information. Monitor the sale of harmful items and verify that the weight, measurement, and payment are accurate and fair. Prevent exploitation, cheating, and the spread of misinformation about prices."

The Act also creates the position of the Gram Sevak, who is appointed by the gram sabha and acts as its executive officer. He is responsible for implementing the decisions of the gram sabha, and has the power to take necessary actions to protect the interests of the village and its residents.

GUJARAT MAJOR TRIBES⁶

The Panchayat Extension to Scheduled Areas (PESA) Act is a law that applies to certain areas inhabited by scheduled tribes in India, including the state of Gujarat. The Act aims to empower these communities by giving them greater control over their own affairs and the development of their local areas. Under the Act, scheduled tribes in PESA areas are given the authority to manage their natural resources, including land, water, and forests, and to conserve their traditional knowledge and culture. The Act also provides for the establishment of Gram Sabhas (village councils), which are responsible for the overall governance and development of the village, and gives them the power to make and implement decisions on a range of issues affecting the village. In Gujarat, the PESA Act has been implemented in several tribal-dominated districts, with the aim of promoting the self-governance and development of scheduled tribes in these areas.

- PESA Blocks: 40
- PESA Panchayats: 2388
- PESA Villages: 4503

Scheduled tribes in Gujarat, like in other parts of India, continue to face a number of socio-economic and political challenges. Some of the major problems faced by the scheduled tribes in Gujarat include:

1. **Poverty:** Scheduled tribes in Gujarat have higher poverty rates than the general population.
2. **Land alienation:** Scheduled tribes in Gujarat have been disproportionately affected by land alienation, primarily due to mining and industrial activities, which has led to displacement and loss of livelihoods.

⁴ "Gujarat Village Panchayat (Gram Sabha Meetings and Functions" <https://www.india.gov.in/gujarat-village-panchayat-gram-sabha-meetings-and-functions-rules-2009>. Accessed 10 Jan. 2023.

⁵ For more information read: "The Right to Fair Compensation and Transparency in Land" <https://prsindia.org/billtrack/the-right-to-fair-compensation-and-transparency-in-land-acquisition-rehabilitation-and-resettlement-bill-2013>. Accessed 10 Jan. 2023.

⁶ "Tribal Demography of Gujarat | About Us." <https://tribal.gujarat.gov.in/tribal-demography-of-gujarat>. Accessed 9 Jan. 2023.

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3. **Lack of access to education:** Scheduled tribes in Gujarat have lower literacy rates and educational attainment than the general population, due in part to a lack of access to quality education and resources.

NAME OF TRIBE	POPULATION IN LAKHS (2011)	% TO STATE'S ST POP. (2011)	DISTRICTS OF CONCENTRATION
Bhil ⁷	42.70	47.89 %	Dang, Panchmahal, Bharuch, Sabarkantha, Banaskantha
Halpati ⁸	6.43	7.21 %	Surat, Valsad, Navsari, Bharuch
Dhodia ⁹	6.36	7.13 %	Valsad, Surat
Rathawa ¹⁰	6.42	7.20 %	Chotaudepur
Naikda ¹¹	4.60	5.16 %	Panchmahal, Valsad
Gamit ¹²	3.78	4.25 %	Surat
Kokna ¹³	3.62	4.06 %	Navsari, Valsad, Dang
Chaudhari ¹⁴	3.03	3.40 %	Surat, Tapi, Bharuch

⁷ ("Indigenous Peoples of the World — The Bhil") The people of the world foundation.

⁸ "Social Economic Mobility of Halpati Tribe of South Gujarat Region." Social Economic Mobility of Halpati Tribe of South Gujarat Region. Accessed 10 Jan. 2023.

⁹ ("Dhodia in India people group profile")

¹⁰ Sharma. M (2021). Social Economic Mobility of Halpati Tribe of South Gujarat Region. International Journal of Social Impact, 6(2), 43-46. DIP: 18.08.20210602, DOI: 10.25215/2455/0602008

¹¹ ("Naikda | Scheduled Tribe | Tribes of Gujarat | Tribal Demography of Gujarat")

¹² ("Gamit | Scheduled Tribe | Tribes of Gujarat | Tribal Demography of Gujarat")

¹³ https://www.indianetzone.com/9/kokna_tribe.htm ("Kokna Tribe")

¹⁴ ("Chaudhari, tribal in India people group profile")

NAME OF TRIBE	POPULATION IN LAKHS (2011)	% TO STATE'S ST POP. (2011)	DISTRICTS OF CONCENTRATION
Varli ¹⁵	3.28	3.68 %	Valsad, Navsari
Dhanka ¹⁶	2.81	3.15 %	Vadodara, Bharuch, Panchmahal
Patelia ¹⁷	1.14	1.28 %	Panchmahal
Others	2.89	3.23 %	Surat, Tapi, Narmada
Total	89.17	100	

- Lack of access to healthcare:** Scheduled tribes in Gujarat face barriers to accessing healthcare services, resulting in higher rates of illnesses and deaths compared to the general population.
- Social discrimination:** Scheduled tribes in Gujarat continue to face discrimination, particularly in terms of access to opportunities and resources, and are often marginalised in the decision-making processes that affect their lives.
- Political marginalisation:** The political representation of scheduled tribes in Gujarat is low and faces difficulty to access decision-making processes and implementation of policies that affect them.

The government of Gujarat has implemented various programs to alleviate the poverty and improve living conditions of scheduled tribes. However, it is important that the policies are implemented effectively and inclusively.

Recent Initiatives taken by Ministry of Panchayati Raj (MoPR) to ensure the effective implementation of the Panchayats (Extension to Scheduled Areas) Act (PESA)¹⁸

The powers to regulate the functioning of Panchayati Raj Institutions (PRIs), including the ability to create local laws, reside with the respective state governments as Panchayats are a state subject. The Ministry of Panchayati Raj (MoPR), as the nodal ministry, works to advocate for and provide financial support for the implementation of the Panchayats (Extension to Scheduled Areas) Act (PESA). The MoPR regularly encourages the states to effectively implement PESA and has taken the following initiatives to strengthen its implementation:

¹⁵Moghe, Gaurav. "Warli tribe and their tribal art." *Biodiversity of India*, 29 September 2012, https://www.biodiversityofindia.org/index.php?title=Warli_tribe_and_their_tribal_art.

¹⁶ "Dhanka in India people group profile - Joshua Project." https://joshuaproject.net/people_groups/16706/IN.

¹⁷ "Patelia in India people group profile | Joshua Project." https://joshuaproject.net/people_groups/17855/IN.

¹⁸ *YouTube*, 6 January 2023, https://www.panchayat.gov.in/documents/448457/0/Presentation+by+NITI+AAYOG_PESA+PPT.pdf/4a1acf46-0d06-015a-9ad8-50c8e5674be2

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- Harmonization Committee¹⁹: A Committee on Harmonization of Central Laws with PESA Act, set up under the chairmanship of the Union Law Secretary, has made recommendations to harmonise certain Central laws with the provisions of PESA. The recommendations have been shared with the Ministries requesting them to address the issues of harmonisation of the laws. The Ministry of Coal and Ministry of Tribal Affairs have agreed to take actions to amend their relevant laws.

A gathering of 850 Tribal Women Presidents of Gram Panchayats from Fifth Schedule Areas took place in Vijayawada, Andhra Pradesh on April 19, 2016 to discuss "the Role of Women Gram Panchayat Presidents in the Development of Fifth Schedule Areas." The meeting was attended by Union and State Ministers as well as their officials."

- The Rashtriya Gram Swaraj Abhiyan (RGSA): a revised version of the Rajiv Gandhi Panchayat Sashaktikaran Abhiyan (RGPSA), includes various projects aimed at strengthening the Panchayati Raj system in India.

The goals of this initiative are to:

1. Foster the transfer of powers and responsibilities to Panchayats in line with the principles of the Constitution and PESA act
 2. Assist Panchayati Raj Institutions in achieving more sustainable goals and accelerating overall development
 3. Provide training, distance learning programs, and skill development workshops for elected members of gram panchayats and panchayat officials
 4. Establish e-governance support structures"
- **Swamitva scheme²⁰ Inclusive Society:** "Linking access to property rights with the improvement of the socio-economic standing of vulnerable populations in villages."
 - **Land Governance:** "To address the need for a defined Abadi area."
 - **Sustainable Habitats:** "Using high-resolution digital maps to create more effective Gram Panchayat Development Plans (GPDs)²¹ by enabling efficient fund allocation and accessibility."
 - **Economic Growth:** "Improving India's economic growth by streamlining property tax processes in states."

LIVELIHOOD INITIATIVE FOR TRIBAL POPULATION

Establishing a mechanism for marketing minor forest produce (MFP) through the use of minimum support prices (MSP) and the development of value chains to ensure that MFP collectors receive fair monetary returns through the fixing of minimum support prices."

"Assistance provided to State Tribal Development Cooperative Corporations and the Tribal Cooperative Marketing Development Federation of India Limited through grants-in-aid under the scheme for the promotion and marketing of products and goods produced by tribal communities."

The Ministry identified 256 High Priority Districts, including tribal districts, with revised population norms for setting up healthcare facilities. For Sub Centres, Primary Health Centres, and Community Health Centres in tribal

¹⁹

<https://www.im4change.org/siteadmin/tinymce/uploaded/Gujarat.pdf>https://www.panchayat.gov.in/documents/20126/0/Panchayati_Raj_Final_pdf_02-5-11.pdf/8aa0a6bd-bdfa-0144-b89b-cd7a78d79981?t=1554872219971

²⁰ https://svamitva.nic.in/svamitva/index.html?OWASP_CSRFTOKEN=RPMR-7N6X-C103-9ED5-RCEL-MR0U-CJZH-PZ0D

²¹ https://www.panchayat.gov.in/documents/20126/0/GPDP_document.pdf/93b09c73-dfac-b86b-5831-a105c4fe435c?t=1554702888943

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and desert areas, the new norms are 3000, 20000, and 80000 respectively. A new criterion for establishing Sub-Centres, based on the time it takes for a person to reach the facility on foot within 30 minutes, has been adopted for selected districts in hilly and desert regions. Additionally, incentives have been established for doctors and paramedics, and policies have been implemented to strengthen facilities for tribal populations and to improve recruitment and retention of healthcare staff.

The Resource Planning and Management Committee²²(RPMC) : is composed of 10 members elected from the Gram Sabha, with representatives from various departments serving as advisors. The RPMC advises the Gram Sabha on matters related to the regulation of mines and minerals. The Gram Sabha may decide on the amount of local materials, such as stones and sand, that can be used by residents, but they must first obtain a permit in accordance with the Gujarat Minor Mineral Concession Rules, 2010. The District Mineral Foundation²³(DMF), created under the DMF Rules 2016, has the authority to collect revenue from leases in scheduled areas, which goes against the principles of the PESA Act. However, there is a provision for the DMF to provide an annual report of their activities in tribal areas to the Gram Sabha.

BEST WAY FORWARD

The PESA Act has the potential to be a powerful tool for empowering tribal and rural communities in the Scheduled Areas of Gujarat. However, in order for it to be effective, there are several steps that need to be taken:

1. **Awareness:** There needs to be a greater awareness among the communities living in the Scheduled Areas about the provisions of the Act and the rights and powers that it gives them. This can be done through education and awareness campaigns, and by providing training to the communities on how to effectively use the Act.
2. **Implementation:** The Act needs to be effectively implemented by the state government and its agencies. This means that the gram sabhas should be established in all villages and given the necessary powers and resources to govern their own affairs.
3. **Monitoring:** The PESA Committee and other oversight bodies need to be effectively monitoring the implementation of the Act, and taking action to address any issues that arise.
4. **Resources and Funds:** Village communities should be provided necessary resources and funds to perform their functions under PESA Act as well as in other schemes, having provisions of PESA Act.

CONCLUSION

It is important for the Panchayati Raj institution and Panchayat extension scheduled areas to differentiate their functions in order to effectively implement policies in the appropriate areas. Overlapping responsibilities can hinder the long-term success of these organisations. Menstrual Hygiene Scheme²⁴(mhs). The menstrual hygiene scheme should aim to increase awareness about menstrual hygiene among scheduled tribe women and adolescent girls. This can be achieved through education and awareness campaigns that provide accurate information about menstrual hygiene and promote the use of safe and hygienic products during menstruation. This act should provide more powers to the tribes in terms of land management, forest management and minor forest produce, and tribals get the right to participate in decision-making process of the development programs implemented in their areas.

²², <https://wasmows.gujarat.gov.in/committees/pani-samitis.YouTube>, 6 January 2023, <https://wasmows.gujarat.gov.in/committees/pani-samitis>.

²³ <https://mines.gov.in/writereaddata/UploadFile/Gujarat%20DMF%20Rules.pdf>

²⁴ "Menstrual Hygiene Scheme(MHS) - National Health Mission." 10 Jan. 2023, <https://nhm.gov.in/index1.php?lang=1&level=3&sublinkid=1021&lid=391>.