PESA Act 1996

[UPSC Notes]

What is PESA Act?

The Panchayat (Extension to Scheduled Areas) Act was enacted in 1996 on the recommendation of the Duleep Singh Bhuriya Committee. Because the provision of Part 9 of the Constitution, related to panchayats, does not apply to the fifth schedule areas. The central government enacted this act to promote self-governance in the Scheduled Areas through Gram Sabha.

The provision of panchayat extension to the scheduled area is commonly known as the PESA Act, 1996. The PESA act has been recently in the news as Chandigarh tribals came up to consult state governments for making amendments and acts to make the Gram Sabha even stronger.

Currently, there are 10 states with 5th schedule areas - Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana. All 10 states have enacted essential compliance legislation by amending the Panchayati Raj Act.

History of PESA Act 1996

The tribes constitute 8.6% of the nation's total population, according to the 2011 census. The country has a high concentration of tribal population, particularly in the fifth and sixth schedule areas, as defined by the constitution.

- If we want to establish the system there at all, the mainstream Panchayat system has to be in sync with its own culture and tradition of governance.
- According to Article 243 M of the Constitution of India, with regard to the 5th schedule areas, for extending the provision of part 9 of these areas, Parliament is required to pass legislation. Hence, the government of India set up a committee under the leadership of Duleep Singh Bhuriya for the extension of scheduled areas. Then after the recommendation of the Bhuriya committee, the PESA Act was passed by Parliament.
- It came into effect on December 24, 1996, for the areas mentioned in the fifth schedule of the Constitution of India.

Objectives of PESA Act 1996

It is proposed to extend the provision of Panchayati Raj of Part 9 of the Constitution to the Scheduled Areas with some specific changes.

- to lay out the provision of self-rule for the vast population of the tribals.
- to provide village governance, people participate individually and directly in political decisions to make gram sabha the centre of all activities.
- to develop a sustainable administrative structure that is more compatible with traditional practices.
- to protect and safeguard the traditions and customs of the tribal population or society.
- To enable panchayats at a suitable level with specific powers profitable to tribals or tribal people,
- Refrain the panchayat at the higher level from presuming the power and authority of the panchayat at the lower level of the gram sabha.

Features of PESA Act 1996

The following are the features of the Panchayat (extension schedule areas) Act:

- The state legislation shall be in congruence with panchayats in scheduled areas with the tribal customary law, their social and religious practices, and traditional management practices of social welfare.
- The ordinary people of a village live in a group of habitations, hamlets, or groups of hamlets and manage the affairs of their community in congruence with their customs and tradition.
- There will be an electoral roll for every Gram Sabha consisting of the names of the eligible people in every village.
- It is the responsibility of every Gram Sabha to safeguard and preserve the people's customs, traditions, and cultural identity.
- Every Gram Sabha is responsible for approving plans, programs, and projects for social and economic development before the panchayat can take them up for implementation at the village level.
- Gram Sabha will also be responsible for identifying the beneficiaries under the poverty alleviation and other programs.
- A certification of Gram Sabha is needed for the utilization of funds in every panchayat at the village level for the above plans, programs, and projects.
- In every panchayat, the reservation of seats shall be in proportion to the community of the population in the scheduled area, and the reservation will be given under part 9 of the constitution. The reservations must account for at least one-half of the total number of seats reserved for the scheduled tribes. At all levels, all chairmanships shall be reserved for the scheduled tribe.
- The scheduled tribe with no representation in a panchayat at the intermediate level or a panchayat at the district level may be nominated by the state government, the condition being that such nomination shall not exceed one-tenth of the total members to be elected in the panchayat.

- The nature of the recommendation for granting a concession for the exploitation of minor minerals by auction and grant of prospecting license or mining lease for minor minerals in scheduled areas is mandatory by the Gram Sabha.

Common concerns related to Panchayat Extension to Scheduled Areas Act

The common concerns related to the Panchayat Extension to Scheduled Areas Act are the following:

- Many provisions in the state Panchayat Act are not clearly defined, apparently due to the vague definition.
- The problems remained unresolved, such as claiming minor forest produce, planning and management of minor water bodies, and the provision of estrangement of tribal lands, which is accepted as the traditional right in the PESA Act.
- Although the gram sabha and panchayat have decentralized statutory powers, no funding or officials are transferred to the lower level administration.
- Money lending, forest, and minor forest produce, mining, and excise are among the areas that will be reframed by new laws and norms that are appropriate for the current time.

Problems in Implementation of PESA Act

There are mainly two hurdles that come across in the implementation of the panchayat (extension to the schedule area) (PESA) Act:

1. Legal difficulties: Legal difficulties mean there is a vague definition of the village gaps and zero mutual understanding between the central and state acts; there is conflict between the existing laws and PESA. There is no clarity about the traditional practices and cultural identity, etc.
2. Political difficulties: Political problems, on the other hand, are politicians being self-concerned and lack of political will in implementing the panchayat extension to schedule areas (PESA), as well as widespread ignorance of the PESA Act among various sections of society.

The PESA (Panchayat Extension Scheduled Areas) Act is the most powerful legislation in Indian history, with the potential to significantly improve tribals' quality of life by recognizing tribals' rights to natural resources in scheduled areas. And it also helps the tribals to change their attitude toward the government and nation. It is almost true that, due to the lack of political will, their rights have been disregarded strategically. But now, it is needed that the central government takes appropriate action to eliminate the loopholes which have come across the implementation of the PESA ACT, 1996.