



**TRIBAL SELF-GOVERNANCE AND NATURAL RESOURCE MANAGEMENT IN  
SCHEDULE AREAS OF JHARKHAND: A CRITICAL ANALYSIS**

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**Abstract**

An institution of self-rule in the tribal village had been in existence since time immemorial. The system of tribal self-governance may be said to be as ancient as the tribals themselves. The village republic must have been formed by the tribal people for managing their village affairs and for maintaining their social solidarity. The Provisions of Part IX of the Constitution are extended to the Fifth Schedule Areas with certain modifications and exceptions by the PESA Act. The Gram Sabha manages the natural resources including land, forest and water in Schedule Areas in accordance with its tradition. However, this power is subject to the provisions of existing laws of land. Tribal peoples have emotional bonding with flora and fauna as most of the tribals are living in and around natural surroundings. They use natural resources as part of their survival while protecting these as part of their duties and obligations. The paper critically examines the function and power of tribal self-governance in fifth Schedule Area of Jharkhand. It also envisages the rights and privileges provided to the tribes under some legislations and how they manage natural resources in Jharkhand. To what extent the laws emphasize the rights and ownership of tribal people and respects their traditions in the control and management of resources.

**Keywords:** Fifth Schedule; Management; Natural Resource; Self-Governance; Tribal

**Introduction**

India has a long history and strong traditions of democratic institutions from ancient times. The tribal self-governance system, cultural practices, livelihood pattern was also in vogue in tribal areas of Jharkhand. Mahatma Gandhi was staunch believer of decentralisation of economic and political power. He believed that strengthening village panchayats was a means of effective decentralisation. He maintained that every village has to be self-sustained and capable of managing

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its affairs. In the interests of democracy, the villages may be trained in the art of self-government. The emphasis has been given on developmental initiatives that must have local involvement in order to be successful. Article 40 of the Constitution lays down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The local bodies have been specifically conceptualised through the 73rd and 74th amendments of the Constitution in 1992 which added Parts IX and IX-A. The amendments confer constitutional status to the Panchayat Raj Institutions. Initially, Part IX was intended to create local governments only in non-tribal rural areas. Part IX of the Constitution was extended to the Fifth Schedule Areas with the introduction of PESA Act in 1996. The PESA is therefore considered by many as a “logical extension of both the Fifth Schedule” and Part IX of the Constitution. To give effect to the provisions of PESA Act, the State Legislature of Jharkhand has passed the Jharkhand Panchayat Raj Act, 2001 (hereinafter JPRA), for both scheduled and non-scheduled areas. A decade later of PESA, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, became operational since 1st January, 2008. The FRA provides substantive rights on forest land to forest dwelling scheduled tribes and other traditional forest dwellers and created an institutional mechanism for recognition of rights and the power to protect, preserve, conserve and manage community forest resources.

The FRA and the PESA are considered to be paradigm shifts that can impact the tribal communities favourably by ensuring access to resources and rights which facilitate self-governance. However, despite the enactment of PESA Act nearly two decades ago and FRA a decade ago, these historical legislations have failed to impact the livelihoods of tribes. These Acts are not being implemented in true spirit and therefore, the purpose intended to achieve is not obtained till now. In *Hota Venkata Surya Sivarama Sastry v. State of Andhra Pradesh*, AIR 1967 SC 71: (1962) 2SCR, “the provisions of the fifth schedule to the Constitution apply with regard to the administration of Schedule Area and Schedule Tribes in any State, other than the states of Assam, Meghalaya and Mizoram.” In *Samatha v. State of Andhra Pradesh* (1997) 8 SCC 191, the Constitutional bench stated:

The Fifth and Sixth Schedules constitute an integral scheme of the constitution with direction, philosophy and anxiety to protect the tribals from exploitation and to preserve valuable endowment of their land for economic empowerment to elongate social and economic democracy with liberty, equality and dignity of their person in our political Bharat.

#### **The PESA Act, 1996**

The PESA Act is the first legislation which recognises the tradition and customs of the tribal persons who are residing in the 5<sup>th</sup> Schedule Areas. It provides legal sanction to the tribal self-governing system. The arrangements of Part IX of the Constitution are extended to the Fifth Schedule Areas with specific adjustments and exceptions by it. The PESA mandates that the State Panchayat Act must be enacted to ensure the protection and preservation of the tribal customs and traditions. Therefore, the Jharkhand Panchayati Raj Act, 2001 is enacted, to some extent, in

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consonance of the provisions of the central PESA Act. This Act allows tribal people to be the part of decision making at the ground level of the village.

Initially, Part IX was intended to create local governments only in non-tribal rural areas. Part IX of the Constitution was extended to the Fifth Schedule Areas with the introduction of PESA Act in 1996. Thereafter, state governments have to make its Panchayati Raj Act compliant with sections 4(i), 4(k), 4(l) and 4(m)(iii) of the PESA Act, 1996. The objective behind such legislation was to foster tribal self-government, even though the Fifth Schedule was not amended and continued to perpetuate state government control in tribal affairs. The resultant legal scheme in place today thus appears inherently unworkable. The provisions of the PESA Act extends Part IX of the Constitution with certain modifications and exceptions to the Fifth Schedule Areas of 10 states, namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. These Schedule Areas in 10 states cover 108 districts (45 fully and 63 partly).

The PESA unequivocally articulated the system of tribal self-governance as the indispensable need of the communities living in Scheduled Areas, and recognized their traditional collective rights over natural resources. The PESA is the first law that empowered traditional communities to redefine the administrative boundaries of their own village. This Act promotes people-centric governance and provides a central role to the Gram Sabha. Empowerment of people is critical in the Schedule Fifth Areas. It is expected that increased decentralized governance will reduce the grievances of the people. The PESA Act spelt out the role of PRIs in general and Gram Sabhas in particular for preparing development Plans in the tribal areas, considering the magnitude of poverty, inequality and the nature and extent of underdevelopment in these areas, aiming to promote the development of the Scheduled Tribes through respecting their culture, traditions and customs. Highlighting the importance of the PESA Act, B.D. Sharma, a former Commissioner for Scheduled Castes and Scheduled Tribes wrote to the President of India in 2010 and said:

The Provisions of PESA, appeared to come as a saviour that is designed to erase the historical injustice done to the tribal community. It engendered unprecedented fervour amongst the tribal people throughout the country. It was perceived as restoration of their dignity and tradition of self-governance, symbolized by ‘Mava Nate Mava Raj’ (Our Village Our Rule).

Dayamani Barla, a known journalist and activist based in Jharkhand says, “People living in fifth scheduled areas were excited as they thought that the new legislation will ensure their control over their resources, land, mines and minerals, minor forest produce etc. But their reality didn’t change even after 25 years of this law.” She further says that:

Powerful people still have control over natural resources and the local community suffers at the hand of these people with clout, if they try to claim their ownership. The government is acquiring land without the consent of gram sabhas (village council). Despite having a 26 percent tribal population, Jharkhand has failed to formulate rules for the

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implementation of PESA, a law meant for the welfare of the tribal community.

Gram Sabha of scheduled areas have also been empowered to maintain natural resources, pertaining to the village, which includes soil, water and forest, as per existing tradition in tribal areas, but not contrary to the provisions of the Constitution.

All States having Scheduled Areas have amended their existing Panchayat Acts to comply with the provisions of PESA broadly. The newly formed States are also obliged to line with the major provisions laid down in the PESA Act. But, there are some grey areas that require to be worked out within sort period of time. There are some provisions in the State Panchayat Acts which are not defined clearly by making subsequent Rules – leaving the scope of ambiguity. Moreover, there are certain subject laws and rules regarding money lending, forest and minor forest produce, mining and excise, which need to be reframed. Notwithstanding that the provisions in such laws which are in conflict with the provisions of PESA have become null and void after December 24, 1997. But, such provisions are being followed by departments and their functionaries because of the simple ignorance of the governments.

#### **The Forest Right Act, 2006**

The Forest Rights Act was meant to empower a community to stake claims to land titles. But securing these rights is a process of continuous struggle, and government and Panchayat functionaries are unaware of the law. The preamble *inter alia* provides the object of the Act:

To recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

Thus, the Act is made with an object to recognize the rights in “forest dwelling Scheduled Tribes” (FDST) and “other traditional forest dwellers” (OTFDs) who have been residing in forests for generations but whose rights have not been recorded. Forests are the part and parcel of tribal people. They cannot sustain on the earth without the existence of the forest. They are closely associated with the forest flora and fauna. The importance of the symbiotic relationship between forests and forest dwelling communities also found recognition in National Forest Policy, 1988, which states as under: -

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations, should be to associate the tribal people closely in the protection, regeneration and development of forests, as well as to provide gainful employment to people living in and around the forest.

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Under the aforesaid context, the Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 after rigorous and democratic consultative process. This statute was enacted with an intent to correct the historical injustice by which tribal and other forest dwelling communities in the country, were alienated from their right to habitation and right to occupy and hold forest land and forest produce. The statute is predominantly enacted to protect the marginalized socio-economic class of citizens and balances the right to environment with right to life and livelihood.

The FRA is an example of the constitutionally mandated protective legislation under Article 15(4) of constitution of India which specifically empowers the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This Supreme Court in the case of *Orissa Mining Corporation v. Ministry of Environment and Forests*, (2013) 6 SCC 476 recognized the Act as an embodiment of the fundamental right to life with dignity enshrined in Article 21, as also the right to protect and preserve religious and cultural rights enshrined in Articles 25 and 29 of the constitution of India. The Act also enfoldes the fundamental duty to protect the natural environment including forests, as enshrined under Article 51-A (g) of the constitution. In the case of *Banwasi Seva Ashram v. State of Uttar Pradesh &Ors.*, (1986) 4 SCC 753, this SC took judicial notice of the fact that Adivasis have been using the forests as dwelling place for generations and using the forest produce for their livelihood: -

1... It is common knowledge that the Adivasis and other backward people living within the jungle used the forest area as their habitat. They had raised several villages within these two tehsils and for generations had been using the jungles around for collecting the requirements for their livelihood-- fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood.

The Supreme Court, in *Animal and Environment Legal Defense Fund v. Union of India &Ors.* (1997) 3 SCC 549, held that while every attempt must be made to preserve the ecology of forests, the right of tribal living in the forests must also receive proper consideration: -

11. Therefore, while every attempt must be made to preserve the fragile ecology of the forest area, and protect the Tiger Reserve, the right of the tribals formerly living in the area to keep body and soul together must also receive proper consideration.

The aforesaid constitutional provisions and judicial precedents demonstrate that the residing of forest dwellers in forest areas and sustaining through traditional practices is not antithetic to the environment and forest ecosystem, but rather integral to the same. The implementation of the Act in letter and spirit is therefore not only a legislative requirement, but a constitutional imperative.

### **A Critical Analysis of the PESA and the FRA**

The PESA and the FRA are considered to be paradigm shifts that can impact the tribal communities favourably by ensuring access to resources and rights which facilitate self-governance. However, despite the enactment of PESA Act nearly two decades ago and FRA a decade ago, these

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historical legislations have failed to impact the livelihoods of Adivasis. The State of Jharkhand has not specifically enacted a separate law for Scheduled Areas. It has added an extra part in the JPRA (Jharkhand Panchayati Raj Act, 2001) for Scheduled Areas. Even, PESA is misinterpreted as PESA means “Panchayat Extension to Scheduled Areas” rather it would have been “The Provisions of the Panchayat (Extension to Scheduled Areas) Act”. This Act is misinterpreted in such a manner that it nullifies its operation in real sense. Its true intention and objective is being throttled by the governments as well as bureaucrats.

The FRA is enacted keeping in view the main objective that tribal people and traditional forest inhabitant should get access to control over natural resources. There is a lengthy process of documentation of forest residing communities’ claim under the FRA. The Gram Sabha prepares the rough maps of community and individual claims. Before being submitted to relevant authorities, these rough maps are verified on the ground with expounded evidence. The FRA treats the Gram Sabha as a public functionary. Whenever the higher authorities reject the Gram Sabha’s claims, those authorities have to give substantive reasons for doing so. The process is complicated and exhaustive one. Such kind of issues were highlighted in *Wildlife First & Ors v. Ministry of Forest and Environment & Ors.*, order of the Supreme Court dated 13<sup>th</sup> February, 2019. In this case, the affidavit filed by the State of Jharkhand indicates that 1,07,187 claims have been filed by STs and 3569 claims have been filed by OTFDs. Out of the above, 27,809 claims of STs and 298 claims of OTFDs have been rejected. The FRA provides for verification and rejection of claims through a process which has not been followed in a majority of rejected claims.

Therefore, the implementation of FRA lacks behind the expectation of the FDSTs and OTFDs. The Forest Bureaucracy is reluctant and unresponsive with the FRA. They think that the FRA envisages the decentralisation of their authority and power from the forest land. This creates hurdles in the enforcement of the arrangements of the FRA in letter and spirit. The Indian Forest Act, 1927 has contradictory provisions with the provisions of the FRA. It also gives the birth of confrontation between beneficiaries and the forest bureaucracy. Unintentionally, the FRA is being implemented to show the public that the government is working in the interest of the STs of scheduled areas. But, in practice, the reality is something else.

The PESA focuses on ensuring tribal self-rule for people living in scheduled areas of India and the FRA protects the ownership of land for tribals or forest dwellers with their right to life and livelihood. Once the PESA will be implemented in its true temperament, it will allow the local self-governance among the tribals. The powers provided to the Gram Sabhas under PESA and FRA should be appropriately implemented in spite of just remaining in the blueprint papers. The PESA and the Fifth Schedule have also not prevented large corporations from gaining “control over the natural resources which constituted the life-support systems of the tribal communities;” neither have they made the tribes prosperous from the mineral-rich land on which they live. In fact, the tribes have “gradually lost control over community resources such as forests” to both settlers and the State.

Virginius Xaxa Committee Report, 2014 (A High-Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities in India), highlighted that 60% of the forest

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area in the country is in tribal areas – protected by Art. 19 (5) and Schedules V and VI of the Constitution. Even, the Ministry of Tribal Affairs and the Ministry of Environment, Forest and Climate Change signed a joint communication on 6<sup>th</sup> July, 2021 to give more power to the tribal communities in managing the forest resources which is related to the effective implementation of the FRA. Tribals and other forest dwellers can contribute significantly in efforts towards climate change through preservation of biodiversity, environmental conservation and enhancing forest cover.

### **Conclusion**

The tribes throughout India have the most distinguished customs and conventions which are parallel to the preserving the nature. Their culture is closely associated with nature. If there are tribes, there is a jungle, and if there is a jungle, there will be tribes. An institution of self-rule in the tribal village had been in existence since time immemorial. The system of tribal self-governance may be said to be as ancient as the tribals themselves. The village republic must have been formed by the tribal people for managing their village affairs and for maintaining their social solidarity. The Gram Sabha manages the natural resources including land, forest and water in Schedule Areas in accordance with its tradition. The Gram Sabha has been vested with the command over natural resources in the village including the minor minerals, water bodies, and the minor forest produce. No mining lease can be granted without the prior recommendation of the Gram Sabha. Tribal peoples have emotional bonding with flora and fauna as most of the tribals are living in and around natural surroundings. They use natural resources as part of their survival while protecting these as part of their duties and obligations. They have protected many plants and trees due to magico-religious belief that they are habitat of God and Goddess.

The PESA and the FRA recognise the tribal self-governance. The need to view PESA and FRA as complementary to each other and the need to strengthen and preserve - the customs and traditional ways of life of the forest dwelling marginalized communities. These Acts ensure that they are in consonance with customary law, social and religious practices and traditional management practices of community resources. The Gram Sabha manages the natural resources including land, forest and water in Schedule Areas in accordance with its tradition. They use natural resources as part of their survival while protecting these as part of their duties and obligations. Since tribal peoples' life and livelihood is very much dependant on nature, they have been traditionally playing the role of protector and conservator of flora and fauna. Obviously, they deserve the right over the natural resources and also management thereof. Their traditional decision making process by the community is truly democratic in nature.

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