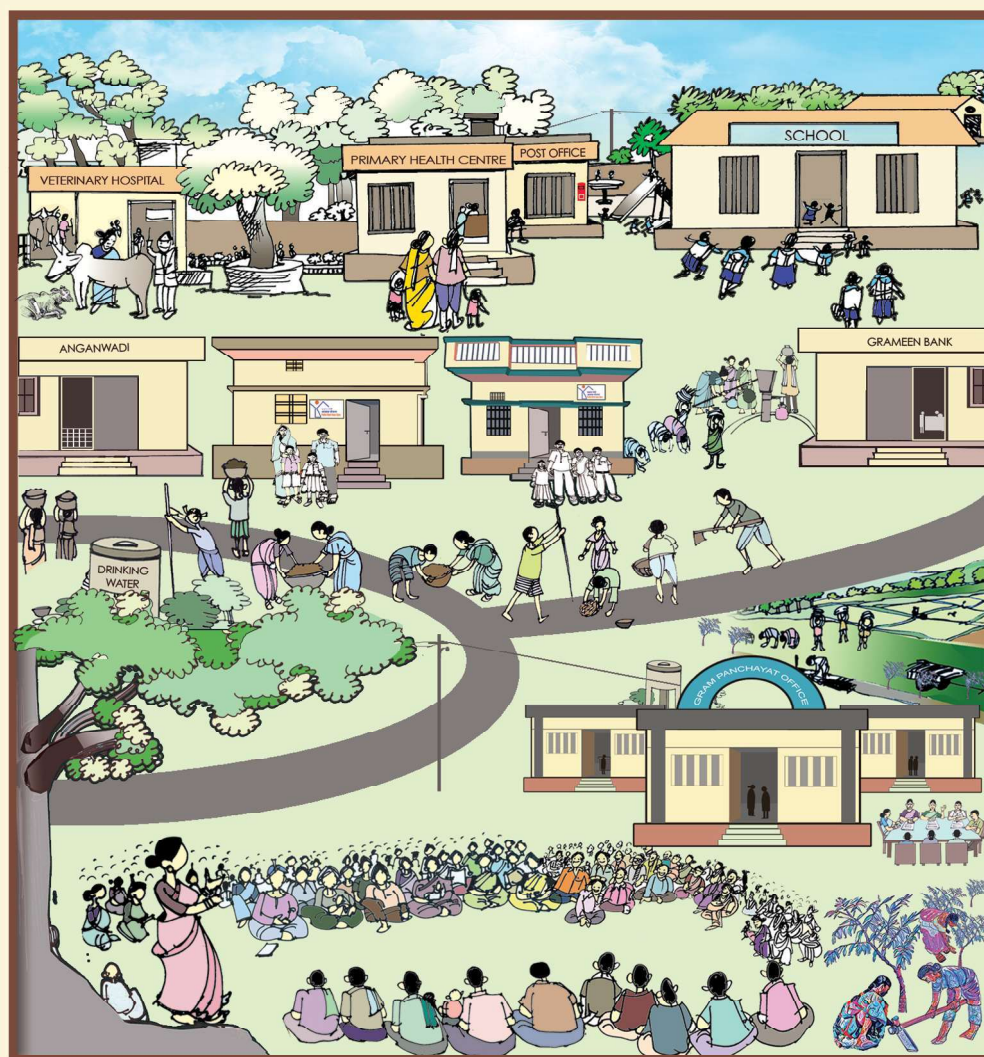


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## ASSESSING THE COMPLIANCE OF THE LOCAL SELF-GOVERNANCE ACT FOR PESA IN JHARKHAND: A POLICY REVIEW AFTER TWO-AND-A-HALF DECADES OF ITS INCEPTION

Dipti Paridhi Kindo\* and Pradip Kumar Bhowmick\*\*

### Abstract

*The 'Panchayat Extension to the Scheduled Areas (PESA) Act, 1996' has completed twenty-six years since its inception. Despite this, it remained dissonant in four out of 10 PESA states before 2022, affecting nearly half of the population residing in the Fifth Schedule Areas (FSA), which are predominantly inhabited by indigenous and tribal peoples with their customary laws, social norms, and traditional practices of common resources. Two states, Chhattisgarh and Madhya Pradesh, implemented the state-specific PESA Guidelines in 2022, but Jharkhand and Odisha have yet to do so. This paper analyses the status of compliance with all the 13 provisions of the PESA Act under the '5-E approach' model with main sections as Effectiveness, Efficiency, Ethical Considerations, Manageability or Evaluation of Alternatives and Establishment of Recommendations for positive change in a tribal-dominated Jharkhand, where 16 out of 24 districts come under the provisions of PESA comprising 32 distinct schedule tribes. The paper indicates that the morally acceptable separate PESA Rules have to be framed with the resolution to be passed in Jharkhand, which will confer a right-based approach to authority and powers essential for the indigenous and tribal people to act as an institution of self-government. Moreover, Sustainable Development Goal Target 16.7 aims to ensure responsive, inclusive, participatory, and representative decision-making at all levels, and PESA can act as a means to ensure it.*

**Keywords:** Local Self-Governance, Decentralisation, PESA Act, Scheduled Tribe, Community Resources, Policy Review, 5-E Approach Model, Sustainable Development Goals.

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## Introduction

The local self-government in rural areas, commonly known as Panchayati Raj Institutions (PRIs), signifies the decentralisation of power within a democratic framework. It serves as a potent instrument for fostering socio-economic progress and political engagement in rural development across India. As of 2021, the Panchayat Extension to the Scheduled Areas (PESA) Act, 1996, intended to facilitate local self-governance in Fifth Schedule Areas (FSA) predominantly inhabited by indigenous and tribal communities, has marked a quarter-century since its inception. Still, in 2023, this essential legislation aimed at empowering these marginalised groups remains unimplemented in two states, Jharkhand and Odisha. The total Scheduled Tribes (ST) populations in Jharkhand and Odisha are 26.21 per cent and 22.85 per cent, respectively, ranking second and third out of all the ten PESA states.

Consequently, these tribal communities are deprived of the empowerment rights they deserve (Jyoti, 2021; S. Pal, 2021; Pandey, 2021; Pandit, 2021). Even though the Ministry of Panchayati Raj (MoPR) had already circulated a draft model of PESA Rules to all states in 2009, underlining the need for effective PESA implementation (Pandit, 2021), the two states mentioned above are still in the implementation process. The soul of PESA is eroded by glaring incompetence, gross violations, and structural loopholes (Pal, 2021).

In terms of Indian national identity, it was perceived that tribals do not meet the 'standard conception,' and the Indian government insufficiently responds to this notion. The initiation at state and non-state levels has taken place to integrate tribal peoples into what is commonly referred to as "the mainstream of national life" (Chaudhury, 2006). Before colonialism began, tribal people were socio-economically underdeveloped but managed their "lands, forests, and water" independently. The term mainstreaming is primarily used to describe the "ethos, values, and traditions" of the significant civilisation of India. There is a belief for tribals that by moulding

themselves to fit into the mainstream, their conditions would automatically improve, which has not occurred (Xaxa, 2016). During the past few years, the states under FSA have used indigenous territories extensively to expropriate iron, uranium, coal, and other metals, build mega-dams, urbanise, develop infrastructure, etc. In the name of development and industrialisation, the indigenous people owning these lands are affected (Hembrom, 2018), affecting their profoundly embedded relationship with the ecosystem spiritually and culturally (Goldtooth, 2004). However, at present, the primary focus should be to protect and expand possibilities for 'tribal livelihood' through available natural resources and to support their growth as a group in PESA states by proper execution of powers provided to the Gram Sabha (GS) despite merely appearing in the blueprint documents (Kindo & Bhowmick, 2019).

## Overview of PESA and Its Features

The PESA Act provides autonomy to GSs to protect and preserve their customs and manage their communities' natural resources and dispute resolution through customary mode (Sahota, 2014). In light of the detailed list of the GSs' powers, it emphasises that the PESA Act ensures the preservation of the traditional tribal system and, thus, the customs of tribals in India. The salient features of PESA Act include:

### *i. Exclusive Powers to Gram Sabha*

Each village shall have its own Gram Sabha despite Gram Panchayat (GP)-wise Gram Sabha, which includes all electors of the GP. A village may consist of one or more habitations or hamlets, forming a community that manages its affairs according to its traditions and customs.

### *ii. Gram Sabha is "Competent" to Safeguard and Preserve:*

- (a) traditions and customs of the people and their cultural identity, (b) community resources, and (c) customary mode of dispute resolution.

**iii. Gram Sabha has mandatory executive functions:**

(a) to approve plans, programmes and projects for social and economic development. (b) identify persons as beneficiaries under poverty alleviation and other programmes, and (c) issue a certificate of the utilisation of funds by the panchayat for the plans, programmes, and projects referred to in the section.

**iv. Powers exclusive to Gram Sabha/Panchayat at an appropriate level:**

(a) right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons. (b) Planning and management of minor water bodies. (c) Mandatory recommendations by Gram Sabha or Panchayat at the appropriate level before granting prospecting licenses, mining leases, and concessions for minor minerals.

**v. Powers Endowed to Gram Sabha and Panchayat at the Appropriate Level:**

(a) to regulate the sale/consumption of intoxicants, (b) ownership of minor forest produce, (c) to prevent land alienation and restore alienated land. (d) manage village markets, (e) to control moneylending to STs, (f) control institutions and functionaries in the social sector, and local plans, including tribal sub-plans and resources. (The Provisions of the Panchayats (Extensions to the Scheduled Areas) Act 1996, 1996)

Jharkhand is a tribal-dominated state with 16 out of 24 districts under PESA, comprising 32 distinct scheduled tribes. Even though the PESA Act is not implemented as a separate state rule, the state's local self-governance act known as 'Jharkhand Panchayati Raj Act (JPRA), 2001' (Government of Jharkhand, 2001) has incorporated various provisions to a large extent as per other provisions of PESA at policy level till now. The status of compliance with all the 13 provisions of the PESA is reviewed under the 5-E approach model (Kirst-Ashman, 2017; Mawson & Evans, 1991; Salamon, 2011) with main sections as "effectiveness, efficiency, ethical considerations,

manageability or evaluation of alternatives and establishment of recommendations for positive change" and two more sections implementation status and empirical evidence (response from the people) are added. The paper indicates that the morally acceptable separate PESA Rules have to be framed with the resolution to be passed in Jharkhand, which will confer authority and powers essential for indigenous people to act as an institution of self-government (Roy, 2023).

Therefore, this paper will examine the following research questions: (i) What is the current status of implementing the PESA Act in Jharkhand? (ii) How compliant is Jharkhand with the 13 provisions of the PESA Act under the 5-E approach model? Furthermore, (iii) What are the perceptions of tribal communities and GP leaders regarding the PESA Act in Jharkhand?

**Literature Review**

Since ancient times, people have had their self-governing villages with their own governance mechanisms at local levels through various assemblies and committees. Later, it was bifurcated into two separate governments: Local and State governments. A Panchayat ruled the local government. Panchayati Raj, a decentralised government where every community is self-reliant and accountable for its own activities, was proposed by Mahatma Gandhi as the foundation of the democratic structure of India. Panchayats have traditionally been influential in the routine governance of rural residents. It is also recognised by the Indian Constitution, which states in 'Article 40 of the Directive Principles of State Policy' that; "The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as self-government units."

The Balwant Rai Mehta Committee was chosen in 1957 to study the Panchayati Raj. Before enacting the 73<sup>rd</sup> Amendment Act in 1992, various committees were formed with different recommendations in these three decades. A 'three-

tier Panchayati Raj' was announced under 'the 73<sup>rd</sup> Constitution Amendment Act presenting Panchayats' as an 'institution of self-government'. Through the 73<sup>rd</sup> Amendment, enacted in 1992, the local self-governance and planning mandates were extended, but for preserving the ethnicity of Scheduled Areas residents and preserving the traditional system was provisioned under the PESA Act in 1996.

"There is a wide chasm between the powers given and the powers exercised" (C. S. Kumar et al., 2023, p. 132). Still line departments or the top-level governing institutions (Mohapatra, 2016) are formulating and implementing the programmes/schemes rather than GPs. Despite persistent demands from local communities and recommendations from official bodies, several tribal habitations in Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh, and Jammu & Kashmir have not been incorporated into these Schedules. This lack of inclusion is significant because the Fifth and Sixth Schedules provide various protections and autonomy to tribal areas, which are crucial for preserving tribal culture, ensuring economic empowerment, and maintaining social justice (Bijoy, 2015b). Most of the research on the provisions of the PESA Act has concentrated on the other states out of ten PESA states. There is a noticeable paucity of studies specifically addressing the implementation and impact of PESA in Jharkhand.

A study examining the PESA implementation in Jharkhand, Chhattisgarh, and Odisha finds that while there are initiatives towards participatory development, the implementation process has been undermined, and the Act's provisions have not been fully implemented. PESA has not been effectively implemented in Scheduled Areas, leading to continued exploitation and deprivation of tribal communities. The Act's provisions have not been incorporated into state laws, and even where they have, implementation has been inconsistent. There is a lack of awareness about PESA provisions among tribal leaders and communities (Tiwari, 2018). Despite high-level planning in North Karanpura of Jharkhand, local realities often

diverge, creating rent extraction and survival opportunities for marginalised populations. The informal coal economy, supported by insurgent groups and political interests, ensures the continued movement of coal despite significant challenges (Oskarsson & Kindo, 2018), whereas the power to control local plans and resources for those plans resides with GPs.

Tribal habitations in Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh and Jammu & Kashmir have not been brought under the Fifth or Sixth Schedules. States that have Scheduled Areas with tribal habitations that are left out have yet to be notified as Scheduled Areas. The PESA Act was introduced in 1996, and the nine states having Fifth Schedule Areas were to enact suitable laws within one year of the coming into force of PESA, but these states with Scheduled Areas have been dismal and have failed to deliver the different powers and authority to GPs. PESA failed due to unclear guidelines, legal infirmity, bureaucratic indifference, lack of political will, resistance to power shifts, and failure to recognise its long-term value of democracy (Bijoy, 2012; Dandekar, 2016). The 11<sup>th</sup> Finance Commission emphasised making panchayats viable institutions by suggesting measures for their functional, financial, and administrative improvement, imposing taxes on land/farm income, revising user charges, and transferring functions and power to panchayats (M. Pal, 2000). The Institute of Rural Management Anand conducted an independent assessment commissioned by MoPR in selected states, especially those that have witnessed difficulties due to alternate mobilisation, highlighting the key dimensions that the formal responsibility of PESA is with the Ministry of Panchayati Raj.

In contrast, the transformation of the governance paradigm in the Scheduled Areas deals with the Ministry of Tribal Affairs. The convergence of these two different ministries in the Union Government was not existing. There is a general lack of information and understanding about PESA's radical character among political executives and administrators, with no significant efforts to disseminate its message (Dandekar &

Choudhury, 2010). The petition filed against the State of Chhattisgarh alleged widespread human rights violations in Dantewada district and neighbouring areas due to the Maoist/Naxalite insurgency and the government's counter-insurgency offensives.

It also focused on the proposed iron ore mining project at Rowghat, warning of its devastating effects on the ecosystem and tribal communities. The petitioners emphasised the need for democratic protest against the project and the lack of implementation of legislation empowering tribal communities in Fifth Schedule Areas (Dandekar & Gill, 2014). Land governance issues, including land alienation and displacement (Bijoy, 2015a) and illegal mining (Deb & Sarkar, 2017; Oskarsson et al., 2024), are prevalent in the Fifth Schedule areas. Development projects have led to social and political upheavals, raising concerns about transparency and accountability, and the neglect of tribals' rights and the extractive development model have exacerbated land conflicts (Veeresha, 2022).

Particularly in Jharkhand, Chhattisgarh, and Odisha, in response to the government's failure to implement laws protecting their rights and preventing land alienation, the tribes started resisting in the form of the Pathalgadi movement, as attempts to undermine their constitutional and legal rights through amendments and ordinances (Xaxa, 2019b). Despite constitutional provisions, the scheduled areas face development-induced displacements, land alienation, and poor health and education indicators. The governors have not effectively protected the interests of the tribal population, leading to violations of the Constitution and neglect of tribal rights, and they have violated the Act at various levels (Choubey, 2015a; Xaxa, 2019a).

In the case of Jharkhand, the PESA Act provides several measures to protect their interests. Yet, in the enactment of the law on freedom of religion in a number of states with sizeable tribal populations, their voice is missing

(Xaxa, 2017). Decentralisation in tribal areas has not yielded optimal results, satisfaction with public goods and services was low; policy actions are needed to strengthen Local Governance (R. Kumar, 2022). There is an overall requirement for advocacy with the States to strengthen the higher tier of Panchayats to have vibrant bodies.

The PESA aims to empower the GSs as centres of excellence for the self-sufficiency of FSA. The PESA Act gives GSs absolute powers, while the state legislature acts in an advisory role in ensuring the working of the GSs and PRIs. The Gram Sabha is the fulcrum of the Panchayati Raj, and the need-based plans are prepared in the GS for the village's overall development (Taqiuddin, 2023, p. 150). The delegation of responsibilities is an example of the principle of subsidiarity. Because of that, Panchayats at the higher levels do not have the right to curtail the power of lower levels, and the structure should be independent. Over the subsequent years, several committees were appointed by the Government of India to revive and re-energise the Panchayats. Milestones occurred for strengthening the Panchayati Raj System in India since 1957 when the Balwant Rai Mehta Committee was formed till the Fifteenth Finance Commission was regulated in 2021 with significant recommendations listed in Table 1.

### **Status Quo of PESA Act, 1996, after Two-and-a-half Decades**

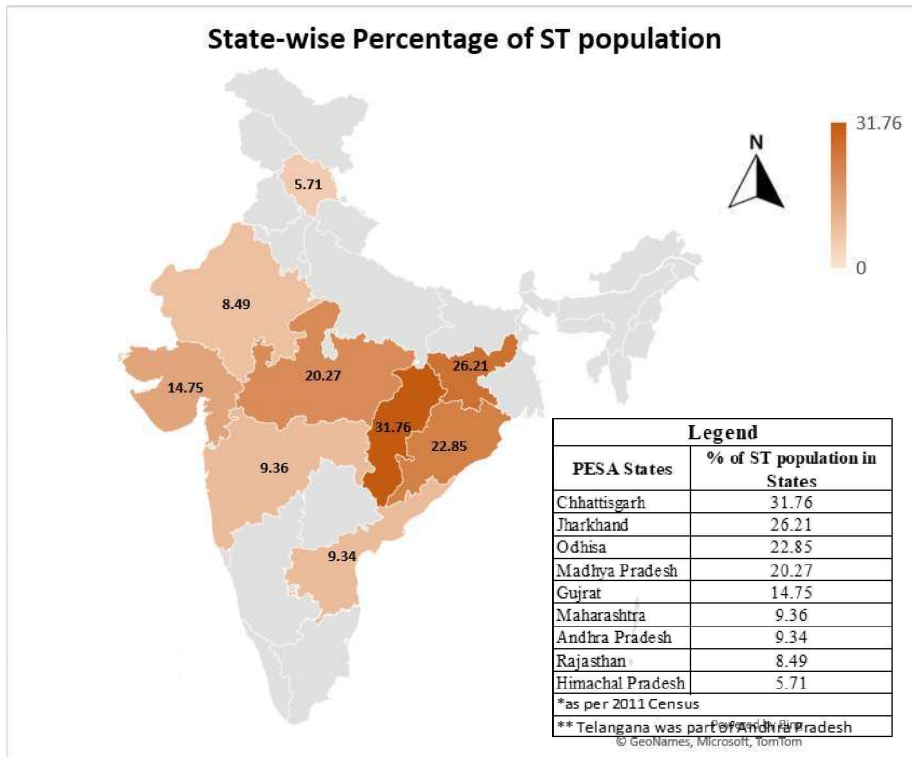
According to the 2011 census, tribals constitute 8.6 per cent of India's total population, yet they are among the utmost marginalised people in Indian society. The state-wise tribal population to the total population of all the 10 PESA states shows that Jharkhand ranks second highest with 26.21 per cent of its total ST population after Chhattisgarh with the highest ST population of 31.76 per cent out of the total population (Figure 1).



**Table 1***Milestones for Strengthening Local Self-Government in India, 1957-2021*

S. No	Milestones	Year	Major recommendations
1	Balwant Rai Mehta Committee	1957	<ul style="list-style-type: none"> <li>• a three-tier Panchayati Raj system</li> <li>• transfer of resources and power.</li> <li>• A cadre of trained personnel for Panchayati Raj Institutions (PRIs)</li> </ul>
2.	R. R. Diwakar Committee	1962	<ul style="list-style-type: none"> <li>• Statuary recognition of Gram Sabha (GS) in each state and to conduct more frequent meetings considering funds and functions.</li> </ul>
3	K. Santhanam Committee	1963	<ul style="list-style-type: none"> <li>• Panchayats have partial control over raising revenue</li> <li>• The creation of 'State Panchayati Raj Finance Corporation.'</li> </ul>
4	Ashok Mehta Committee	1977-1978	<ul style="list-style-type: none"> <li>• A two-tier system with taxation power</li> <li>• Constitutional recognition for PRIs.</li> <li>• Political parties at all tiers</li> <li>• a minister to be chosen by 'the state council of ministers.'</li> </ul>
5	G V K Rao Committee (1985)	1985	<ul style="list-style-type: none"> <li>• Strengthening of Block Development Office to plan, implement and monitor the developmental schemes.</li> </ul>
6	L M Singhvi Committee	1986	<ul style="list-style-type: none"> <li>• GS should symbolize direct democracy with constitutional Status to Panchayats.</li> </ul>
7	Sarkaria Commission	1988	<ul style="list-style-type: none"> <li>• Regular and timely elections</li> <li>• Availability of adequate fund</li> </ul>
8	Panchayati Raj System under the 73 <sup>rd</sup> Constitutional Amendment Act	1992	<ul style="list-style-type: none"> <li>• Part IX is inserted in the Constitution, which lists 29 subjects with a three-tier system in every state.</li> </ul>
9	Bhuria Committee	1995	<ul style="list-style-type: none"> <li>• Regulation of "PESA Act for Fifth Schedule Areas"</li> </ul>
10	PESA Act	1996	<ul style="list-style-type: none"> <li>• Self-governance, as per the customary law, is extended to tribals in Fifth Scheduled Areas.</li> </ul>
11	Ministry of Panchayati Raj	2004	<ul style="list-style-type: none"> <li>• Union Ministry was established</li> </ul>
12	Thirteenth Finance Commission	2009	<ul style="list-style-type: none"> <li>• "Share of panchayats in the Union Revenue Divisible Pool"</li> </ul>
13	Fourteenth Finance Commission	2015-2020	<ul style="list-style-type: none"> <li>• Basic grants to the Panchayats shall be utilised for predefined basic services.</li> <li>• Basic to-performance grant ratio be 90:10.</li> </ul>
14	Fifteenth Finance Commission	2021 onwards	<ul style="list-style-type: none"> <li>• no integrated approach to the local governments.</li> <li>• Reduction of performance grants and limiting them to limited sectors.</li> </ul>

Source: Author's compilation from (Alok, 2011; M. Pal, 2020; XV Finance Commission Report, 2019)

**Figure 1***Percentage of ST Population in PESA States*

Source: Author's compilation from Census 2011.

It is found that PESA's efficacy has fallen "to achieve its desired target because it does not specify rule-making powers or provide a period by which the States have to frame Rules." The state has attempted to emphasise its commitment to better enforcing this law, albeit concurrently pursuing agendas aligned with 'corporate capital' in tribal regions (Choubey, 2015b, 2017). Furthermore, PESA's effectiveness has been delayed by the absence of accompanying regulations formulated by the states, resulting in a lack of practical implementation of the legislation. Most research studies concentrate on separate or only a few provisions of the PESA Act (Tiwari, 2018). Overall, there is a significant scarcity of literature about PESA, which also concerns Jharkhand, with inadequate systematic analysis of its implementation and resulting impact.

On May 17, 2010, Dr. B. D. Sharma penned a letter signified by 'Mava Nate Mava Raj' (Our Village Our Rule) (Pandey, 2021) addressed to the President of India. In this letter, he emphasised various aspects of the PESA Act, which should be implemented concerning the dignity of tribal communities (Choubey, 2017). Dr. Sharma resigned from his bureaucratic role in 1981, and he was the individual who contributed to the groundwork of the Bhuria Commission report, the Forest Rights Act (FRA), and the PESA Act (Sengupta, 2015).

Subsequently, the Ministry of Panchayati Raj (MoPR) established a sub-committee called the B.D. Sharma sub-committee, tasked with formulating Model Guidelines for PESA to empower GSs in alignment with their envisioned powers (Ministry of Panchayati Raj, 2010). The MoPR

press release ‘Implementation of PESA Act, 2021’ highlights various measures taken to empower Gram Sabhas and effectively implement the Act. The MoPR circulated Draft Model Rules for PESA, targeting state governments in 2009. The Rashtriya Gram Swaraj Abhiyan (RGSA) provided human resource support and enhanced capacity through various means. Noteworthy efforts encompassed organising state-level workshops for PESA states, devising manuals for PRIs, and formulating guidelines for community mobilisation in FSA states. During the Gram Panchayat Development Plan (GPDP) in 2016, a distinct set of guidelines was issued, outlining comprehensive steps to be followed by states to facilitate participatory local development in PESA regions. Regrettably, these guidelines remained elusive for states where PESA guidelines were not published. Furthermore, an annual allocation of approximately Rs 5 crore was proposed for PESA states, aimed at establishing a

separate compartment dedicated to monitoring the execution of PESA (Working Group on Democratic Decentralisation & PRIs Report, 2006). However, the responsibility of strengthening the establishment of the Panchayats is left to the state government on the plea that the Panchayat is a “state subject” (Roy, 2023, p. 105).

In November 2021, a National Conference focused on the provisions of the PESA Act was convened, underlining the necessity for a thorough review of PESA’s implementation within its 25 years. This conference seeks to ensure the safeguarding of the fundamental rights of tribal communities (Ministry of Panchayati Raj, 2020). This problem is unavoidable and must be addressed in two states – Odisha and Jharkhand – which have yet to formulate PESA guidelines out of the ten states. To clarify further, Table 2 presents an updated overview of the eight states that have successfully framed their PESA Rules.

**Table 2**

*Statement of PESA Rules Framed by States under Fifth Schedule Areas*

S. No.	State	PESA Rules
1	<b>Andhra Pradesh (AP)</b>	The Andhra Pradesh PESA Rules 2011
2	<b>Chhattisgarh</b>	The Chhattisgarh Panchayat (Extension to the Scheduled Areas) Rules 2022
3	<b>Gujrat</b>	The Gujrat Provisions of the PESA Rules 2017 and The Gujarat Provisions of the PESA (Amendment) Rules 2017
4	<b>Himachal Pradesh (HP)</b>	The HP Panchayati Raj (Extension to the Scheduled Areas) Rules 2011
5	<b>Madhya Pradesh</b>	The Madhya Pradesh Panchayat (Extension to the Scheduled Areas) Rules 2022
6	<b>Maharashtra</b>	The Maharashtra Village PESA Rules, 2014
7	<b>Rajasthan</b>	The Rajasthan Panchayat Raj (Modification of Provisions in their Application to the Scheduled Areas) Act, 1999 The Rajasthan Panchayati Raj (Modification of Provisions in their application to the Scheduled Areas) Rules, 2011
8	<b>Telangana</b>	PESA Rules of AP, 2011 has been adopted
9	<b>Jharkhand</b>	Yet, to frame the PESA Rules
10	<b>Odisha</b>	Yet, to frame the PESA Rules

*Source:* (Ministry of Panchayati Raj, 2023)

## Methodology

### Study Area

Jharkhand was selected as the study area out of Odisha and Jharkhand, the two states that are yet to frame the PESA Rules. As the percentage of STs in the state is higher in Jharkhand, its policy, rules, guidelines, and notifications related to all the 13 factors in Model PESA Rules (MoPR, 2009)

were the benchmark for efficiency. The Gumla district has been selected for primary data collection as it has a high proportion of STs (68.94 per cent) per the 2011 Census. Two FGDs with the GP President (Mukhiya) were only conducted in the Ghaghra and Basia blocks, which have 18 and 15 GPs, respectively. A total of 25 GP Presidents were involved in both the FGDs.

**Table 3**

*Details of FGDs in Study Area*

S. No	State	Region	Name of District	Name of Block	No. of FGDs	No. of PRI member
1.	Jharkhand	South Chotanagpur	Gumla	Ghaghra	1	13
				Basia	1	12
Total:					2 FGDs	25 Respondents

### Methods

This study's methodology comprises (i) analysis of the secondary data, which was meticulously collected from various sources, including research publications, online news articles, governmental policies and acts, official websites, and grey literature, (ii) a comprehensive evaluation of all thirteen provisions of the PESA Act based on the framework of the 5-E approach model, explicitly focusing on their adherence to the State Panchayati Raj Act in Jharkhand, and (iii) two Focus Group Discussions (FGDs) with the GP President (Mukhiya) to understand the present status.

In the 5-E approach model of policy analysis, the policy is measured (Kirst-Ashman, 2017; Mawson & Evans, 1991; Salamon, 2011) in terms of - (i) How effectively the policy has worked?, (ii) How efficient is the policy? (iii) Is the policy ethically sound? (The ethical Consideration (People Centric Consulting Group, 2022) is based on the type of ethical approach) (iv) What are the findings of evaluating alternative policies? and (v) How can positive changes be established? Furthermore, two more sections, implementation status and empirical evidence (response from the people), are added.

Under the framework of the 5-E approach model, a comprehensive evaluation of all thirteen provisions of the PESA Act is undertaken, explicitly focusing on their adherence to the State Panchayati Raj Act in Jharkhand- JPRA. This state, known for its significant tribal influence, holds an ST population accounting for 26.2 per cent of the total population (Census, 2011). This diverse tribal demographic encompasses 32 distinct schedule tribes, including eight Particularly Vulnerable Tribal Groups (PVTGs).

### Analysis and Discussion

#### ***Status of Compliance of the JPRA Regarding the 5-E Approach Model***

Provision-wise analysis of the PESA Act for its compliance concerning the JPRA attained under the 5-E approach model has been deliberated in this section, and a comprehensive review of the policy is presented in Table 3. Three sub-sections of Section (4) of the PESA Act correlated with the power to restrict the sale of intoxicants, prevent land alienation, and control moneylending, which need immediate attention to frame state PESA rules.



**Table 3***Review of Compliance of PESA Act in the JPRA under the Five-E Approach Model*

<b>Sections of the PESA Act</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Ethical considerations</b>	<b>Evaluation of alternatives</b>	<b>Establishment of recommendations</b>	<b>Implementation Status (Yes/No)</b>	<b>Empirical Evidence (Response from the people)</b>
<b>4 (a)</b>	Customary, social, and religious practices will be ensured, traditionally managing community resources.	No specific Act has been issued which aligns with the specified features	Rights Approach	Few provisions are implemented through the Forest Rights Act 2006	The state may pass a resolution to that effect.	Yes	Customary laws and religious practices are becoming obsolete and vanishing.
<b>4 (b)</b>	Each habitation can manage its affairs according to traditions and customs.	Planning in Gram Sabha (GS) for Scheduled Area is in accordance with customs and usages.	Common Good Approach	Section 3(iii) of JPRA*, 2001	An exceptional habitation can be recorded as a village.	Yes	Most of them follow general approaches.
<b>4 (c)</b>	GS will consist of all the people enrolled in the voting list.	Everyone enrolled for voting is eligible for GS	Rights Approach	Section 3(ii) of JPRA, 2001	-	Yes	It is regulatory.
<b>4 (d)</b>	"GS shall be competent to safeguard and preserve the traditions and customs of the people, community resources, and the customary mode of dispute resolution."	- GS meetings are presided over by the traditional head -Community resources are preserved. -the quorum of the GS is one-third.	Rights Approach and Common Good Approach	-Section 8(iii), 10 (5)(i) to (v) of JPRA, 2001 - Section 7(i) & Quorum of JPRA, 2001	-The JPRA may use the term "competent" in section 10(5)(i) of JPRA, 2001 -State Legislation may pass a resolution for consonance.	Yes	The traditional head's details should always be mentioned in all government documents.
<b>4 (e)</b>	i) GS shall approve development plans, programmes, and projects. ii) GS will make identification of beneficiaries.	Decentralised & participatory planning full utilisation of the local labour force Assistance for the most deprived.	Rights Approach and Justice/Fairness Approach	- Section 10(1)(A), 75(A)(15), 75(B) of JPRA, 2001	Amendment in the Rules for convergence with other schemes or departments.	Yes	The plans have been made, but the implementation can be done accordingly.
<i>Contd...</i>							

<b>Sections of the PESA Act</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Ethical considerations</b>	<b>Evaluation of alternatives</b>	<b>Establishment of recommendations</b>	<b>Implementation Status (Yes/No)</b>	<b>Empirical Evidence (Response from the people)</b>
<b>4 (f)</b>	GS will monitor and certify the fund use of all the schemes	Ensuring transparency	Rights Approach	Section 10(1)(a)(v) of JPRA, 2001	To ensure this transparency through Social Audit of different schemes	Yes	It can be more transparent and actions on Social Audit.
<b>4 (g) and 4 (h)</b>	Reservation for the disadvantaged and marginalised groups in all three tiers	Representation of the Scheduled tribes and Scheduled Castes will be ensured	Rights Approach	Section 1(B)(1), 21 (B), 36(B)(7), 51 (B)(7) of JPRA, 2001	To ensure nomination from different tribes by rotation in all the three tiers	Yes	It is regulatory.
<b>4 (i)</b>	Land acquisition, resettlement, or rehabilitation would occur only after consultation with GS.	Ensure appropriate payment of the compensation	Rights Approach and Utilitarian Approach	Section 85(5), 86 (5), and 144(1) of JPRA, 2001	To modify as per 'Land Acquisition, Rehabilitation and Resettlement Act 2013' as mentioned in Section 85(5) of JPRA, 2001.	No	The latest laws benefitting the tribals should be implemented.
<b>4 (j)</b>	Panchayats can plan and manage minor water bodies on all three levels.	Equal rights over these water resources with the priority of use.	Rights Approach and Common Good Approach	Section (10)(1) (A) (xi) -(xii), (10)(5) (ii), (75)(A)(4), (76) (B) of JPRA, 2001	Amendment in the Rules for convergence by water Resources Department of Jharkhand	Yes	Planning is done, but management is not done accordingly.
<b>4 (k) and 4 (l)</b>	Granting licenses or mining leases and exploiting minor minerals will take place only after the consultation through GS.	Protection of the environment in keeping with sustainability and employment	Rights Approach and Common Good Approach	Jharkhand District Mineral Foundation (Trust) Rules, 2016.	Implementing Amendment (2014) in Jharkhand Minor Mineral Concession Rule, 2004.	Yes	It is regulatory, but prohibition cases in nearby areas are still observed.
<i>Contd...</i>							

<b>Sections of the PESA Act</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Ethical considerations</b>	<b>Evaluation of alternatives</b>	<b>Establishment of recommendations</b>	<b>Implementation Status (Yes/No)</b>	<b>Empirical Evidence (Response from the people)</b>
<b>4 (m)</b>	i) The sale of intoxicants can be restricted to Panchayati Raj Institute and GS.	Control the use of liquor or other intoxicants.	Common Good Approach	Section 77 (A) (xxiii)(f) of JPRA, 2001	-State Excise Department may pass a resolution. - Intoxication Control Committee	No	It is not regulatory.
	ii) Minor Forest Produces (MFPs) ownership to Panchayati Raj Institute and GS	Source of revenue and keeping the tribal interests.	Common Good Approach	-Forest Rights Act, 2006. -Section (75)(A) (viii)(a) of JPRA, 2001	A resolution with a complete list of MFP items and Minimum Support Price (MSP) may be passed.	Yes	They are not involved in livelihood and food security.
	iii) Power to prevent land alienation to Panchayati Raj Institute and GS	Restoration of unlawfully alienated land of Scheduled Tribes.	Rights Approach and Common Good Approach	-Land Acquisition, Rehabilitation, and Resettlement Act, 2013 -Section 77(A) (xxiii)(i) of JPRA, 2001	State legislation may pass a resolution to that effect.	No	The Scheduled Tribes' lands are dispossessed.
	iv) Power to manage village markets to Panchayati Raj Institute and GS	Livelihood means are sustained.	Rights Approach and Common Good Approach	Section (75)(A) (21) of JPRA, 2001	Forming a Market Management Committee with defined Rules.	Yes	As per the JPRA, it can be done, but at present, it is not done by GP.
	v) Control money lending to Panchayati Raj Institute and GS	Actual money lending transaction with the defined rate of interest.	Common Good Approach	Section 77(A)(xxiii) (g) of JPRA, 2001	State legislation may pass a resolution to that effect	No	No defined rate of interest except SHGs.
	vi) Control of social sector instructions and functionaries	Improvised implementation	Rights Approach and Common Good Approach	Section 10(1)(a)(x) of JPRA, 2001	-Amendment in the Rules for convergence -To ensure transparency through Social Audit	Yes	There is a lack of awareness and action.
	vii) Controlling local plans and resources for such plans, including tribal sub-plans	Inequality among the people does not increase.	Rights Approach and Common Good Approach	Section (75)(B)(3), (76)(B)(2)-(3) of JPRA, 2001	Resource Planning and Management Committee can be formed	Yes	The members were unaware of the committees and tribal sub-plans.

The formulation of distinct PESA guidelines will play a pivotal role in ensuring the effectiveness of planning within the Gram Sabha for FSA through traditional leadership and safeguarding community resources. This initiative will extend support to the most marginalised sections of society, aiding in protecting their rights. Moreover, it is crucial to eliminate any potential misconceptions and ambiguous assertions. For instance, the statement “all three tiers of PRIs can exercise control over local plans, including tribal sub-plans” necessitates clarity. The state must develop enabling regulations to streamline the process through which each tier of PRIs exercises control over the same subject matter. Likewise, there are certain areas where ambiguity exists. For instance, the Panchayat Samiti and Zilla Parishad have the authority to oversee minor water bodies, which currently lack precision (Enviro Legal Defence Firm, 2012).

The FGDs revealed that the following three sub-sections of Section (4) of the PESA Act - allied with the power to restrict the sale of intoxicants, prevent land alienation and control moneylending - have not been implemented yet.

**a) To restrict the sale of intoxicants:**

The FGD brought forward significant issues related to controlling and restricting intoxicants under the PESA Act. The authority grants to restrict the sale of intoxicants and control the use of liquor and other intoxicants within their jurisdictions. Participants in the FGDs voiced their concerns about the pervasive availability and abuse of alcohol and other intoxicants in their communities, which have led to numerous social problems, including increased domestic violence, health issues, and economic instability. Also, the rice beer, locally known as Haria, is readily available. The discussions highlighted the need for more robust implementation mechanisms and community support to ensure the effectiveness of these measures. Participants suggested that the state government should provide more resources and training to local bodies to help them enforce these restrictions and promote awareness about the harmful effects of intoxicants.

**b) To prevent land alienation:**

As per the provisions of the PESA Act, the rights to prevent land alienation and to restore unlawfully alienated lands are assigned to Gram Sabhas and Gram Panchayats. However, no specific provision is there in JPRA. This discrepancy was a significant point of discussion during the FGDs. Participants highlighted that the centralisation of such critical powers should be defined at the village or community level; otherwise, it will undermine the essence of local self-governance and diminish the direct control of tribal communities over their land resources.

Furthermore, the PESA Act mandates that panchayats at the appropriate level must be consulted before any land acquisition in Scheduled Areas. This critical provision, designed to protect tribal lands from external encroachments, is notably absent in the JPRA. The absence of this consultative process in the State Act, which can be mandatory, has led to instances where tribal lands have been acquired without adequate local input or consent, exacerbating issues of displacement and marginalisation. Due to this, both the FGDs underscored the urgent need for Jharkhand to align its legislation with the PESA Act to ensure that the rights and autonomy of tribal communities for land are upheld.

**c) To control moneylending:**

The FGDs highlighted critical concerns regarding controlling moneylending in the tribal regions. According to the PESA Act, the authority to regulate moneylending is granted to PRIs and GSs. However, the FGDs revealed that, in practice, there is no defined interest rate for loans provided, except for those given by SHGs. This lack of standardised interest rates has led to inconsistent lending practices and potential exploitation by moneylenders who often charge exorbitant rates. Participants in the FGDs expressed the urgent need for clear regulations and defined interest rates to protect the financial interests of tribal communities, safeguard tribal communities from financial exploitation and enhance their economic stability.



### **PESA Act is a sine qua non for Scheduled Tribes**

Governance differs from the government as it is the process by which many stakeholders declare their interests, claim their rights, and manage conflicts (Debroy, 2004). PESA deepens governance through participatory decision-making and promotes the idea that self-rule is the natural and constitutional right of the indigenous people of these rural areas (Choubey, 2015b; M. Pal, 2020). Tribal people have been practising indigenous cultural and biological diversity conservation. Their cultural system ensured a sustainable use of resource, and help them continue their livelihood for several generations. They endlessly play a significant role in preserving and managing natural resources within the framework of their indigenous knowledge (Hembrom, 2018; Singh, 1994). FGDs highlighted that customary laws and religious practices are vanishing, and most tribals follow the general approaches of non-PESA GPs. Although, in the Scheduled Areas, the posts of chairpersons and vice chairpersons of the gram panchayats are reserved for STs, it was found during FGDs that, the traditional leaders are not the same in most of the cases, and the GS are held in their absence. They also wanted the traditional head's details to be mentioned in all government documents.

It is argued that the state is disempowering traditional leaders and bodies, depriving residents who cannot fight against external encroachments on and expropriating tribal lands. After JPRA, there was a contradiction among leaders, specifically at the hamlet level, with one leader as 'elected' whereas a 'tribal-head' already existed, which hybridises the tribal periphery (Correndo, 2020) as distinct tribes of Jharkhand followed an inimitable traditional self-governance system and the different tenurial Acts are considered for solving disputes locally and ownership for natural resources (Sundar, 2009). Failing the implementation of PESA by omitting its main provisions, the state governments are diluting the essence of PESA (Tiwari, 2018). Additionally, the FGDs revealed significant opposition from non-tribal groups towards the provisions for reservation and the

establishment of statutory panchayats in tribal regions. All the participants of FGD were tribals, and they expressed that non-tribals were concerned that these provisions would lead to preferential treatment of tribal communities and undermine their own socio-economic opportunities.

The 'ownership' of the Minor Forest Produce (MFP) is endowed with the Gram Sabha and gram panchayat by the PESA Act. Nevertheless, in the Conformity Act, only managerial responsibilities ('manage 'store' and 'market') are vested with the Gram Sabhas and gram panchayats, which shall be facilitated by the Forest Department in the overall management of MFP for its sustainable management and use primarily through value addition, market linkages and minimum support price among others securing their livelihood. As is evident from the above, the functions are listed under the general functions of the PRIs, which are subject to conditions prescribed by the state and the funds available with panchayats. However, the respective State governments have made no such organised efforts to create a conducive environment for the PRIs and GSs to own, control and manage MFPs (Meenakshisundaram, 2023, p. 111). Moreover, as stated earlier, the most important aspect of ownership to GS and Panchayat at an appropriate level is missing in total contravention of PESA.

### **Unfavourable Execution of Laws for Fifth Schedule Areas of Jharkhand**

After one year of the formation of Jharkhand as a separate state in 2000, the Jharkhand Panchayat Raj Act, 2001, was formed. After nine years, the Jharkhand Panchayati Raj (Amendment) Bill, 2010, was passed, and the Bill changed the provision regarding the reservation of posts, which is different for Scheduled and Non-Scheduled areas. The PESA Act has not yet been implemented separately; however, the Jharkhand Panchayati Raj Act, 2001 (Government of Jharkhand, 2001), has incorporated various provisions to some extent but

not amended it as per other provisions of PESA at the policy level. PESA is worthy legislation; if it is taken seriously and appropriately implemented in Jharkhand, it is real wisdom (Pandey, 2021).

Despite the passage of two decades since the inception of the Jharkhand State Panchayati Raj Act in 2001, various factors have contributed to the absence of separate PESA Rules in Jharkhand. The fragility of decentralised governance stems from political disinterest, Naxalite movements, and a lack of awareness among the populace, collectively impeding the comprehensive implementation of PESA (Bara, 2017). Moreover, an inherent contradiction persists, wherein the Indian Constitution upholds the imperative of preserving the distinct identity of tribal communities in FSA (Sundar, 2009). Also, there is no unremitting communication with tribals to try a mode to design rules for implementing self-governance, nor is the state initiating the giving back of traditional autonomy to tribals (Hebbbar, 2017).

Development objectives have seriously affected tribal intensely embedding spiritual and cultural relationships with the ecosystem. Today, it is tricky for Aboriginal people to balance sustainable economic systems and preserve their culture (Hembrom, 2018; Sundar, 2011), totally against the PESA Act. It is claimed that the decisions of the state government, like formulating the Gram Vikas Samitis (GVS), are an insult to tribal people, ignoring the PESA or traditional system of tribals without any transparency or accountability (Swamy, 2018). Few studies have been initiated in Jharkhand funded by MoPR, but policy recommendations are still dubious. An independent assessment of the correlation between the assurance and the truth of tribal self-rule found probing illegal mining in Jharkhand reflecting on the level to which people of FSA are being cheated, and these communities are unable to assert their constitutional rights (Dandekar & Choudhury, 2010).

A study in Gumla and Khunti districts of Jharkhand (Tiwari, 2018) discloses that in field

reality, there is diminutive clarity about the guarantee of consonance. At the operational level, these clarifications are required. There are vague provisions related to moneylending that have not been resolved yet, and the respondents agreed that their land was acquired without their permission.

### Limitations of the Analysis

The study primarily focuses on Jharkhand, which limits the generalizability of its findings to other states with different contexts. The reliance on a limited number of FGDs and the involvement of tribal GP Presidents may introduce bias, potentially overlooking the perspectives of ordinary community members. Additionally, the study's temporal scope and methodological focus on the 5-E approach may not fully capture recent developments or other essential aspects of PESA implementation, such as cultural or social factors.

Future research could include comparative analyses across states and broader stakeholder engagement incorporating interdisciplinary approaches. These directions would help to create a more comprehensive understanding of the PESA Act's effectiveness and its implications for tribal governance and rights.

### Conclusion

Based on the findings of the provision-wise analysis of the PESA Act under the 5-E approach model, it is suggested that for finalising the State PESA Rules in Jharkhand, the power in correlation with restricting the sale of intoxicants, preventing land alienation, and controlling moneylending ought to be made compliant, and state legislation may pass a resolution to that. It will confer a right-based approach to authority and powers essential for the indigenous and tribal people to act as an institution of self-government. To strengthen local governance in tribal-dominated areas, it is suggested that the authority and influence of panchayats be enhanced in administering government schemes and

distributing public goods and services (Kumar, 2022). Operationalisation of the state PESA rules will preserve the identity of the indigenous people of FSA with their own customs, laws, social norms, and traditional practices. The Sustainable Development Agenda prioritises decision-making with specific reference to the involvement of vulnerable groups in developing countries (SDG target 10.6). Moreover, SDG target 16.7 aims to “ensure responsive, inclusive, participatory and representative decision-making at all levels” (United Nations, 2015), and PESA can perform as a means for ensuring it.

The inscribing provisions of the PESA Act on stone slabs in the villages of the FSA to raise awareness of the provisions (Xaxa, 2019a) is made. However, it has already been delayed, and a revision of the convergence rules with other flagship programmes or departments concerned is required to implement PESA in its true essence immediately. Table 3 illustrates the status of

provision-wise alternatives of the PESA Act, and the recommendations established for its implementation. In the states where the PESA Act has been under regulation, any tribal groups have begun asserting their rights, which are specified through the GS for PESA Areas. It disseminates the message that local communities in rural areas have a natural and constitutional right to self-government (Choubey, 2015b), and they have been empowered to manage their local affairs and equipped with special powers to preserve tribal identities (Sisodia, 2021). Hence, the comprehensive description of each provision will offer meaningful directions for research institutions and decision-makers involved in local self-governance, over and above, the indigenous people of FSA, who are the legatees of PESA, to claim their rights. Implementing PESA in Jharkhand will promote people-centric governance and emphasise the crucial role of Gram Sabha, thereby empowering individuals in FSA.

#### **Author's Contributions:**

Dipti P Kindo: Conceptualisation, Methodology and analysis, Data collection and data compilation, Original draft preparation

Pradip K Bhowmick: Methodology and analysis, Supervision

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