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## RESEARCH ARTICLE

### IMPLEMENTATION OF PESA ACT IN CHHATTISGARH: CHALLENGES IN DECENTRALIZED GOVERNANCE IN SCHEDULED AREAS

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#### Abstract

The enactment of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) marked a watershed moment in India's constitutional history, promising a radical shift from representative democracy to participatory democracy for the tribal populations of the Fifth Schedule areas. Envisaged as a "Constitution within the Constitution," PESA sought to institutionalize the traditional Gram Sabha (village assembly) as the supreme decision-making body regarding local resources, customs, and dispute resolution. This research paper provides an exhaustive, critical analysis of the implementation of PESA in the state of Chhattisgarh, a region where 30.6% of the population belongs to Scheduled Tribes and which holds vast mineral reserves. For twenty-six years following the central enactment, Chhattisgarh operated without specific state rules, creating a legislative vacuum that facilitated the centralized appropriation of tribal lands for mining and industrialization. The notification of the Chhattisgarh Panchayat Provisions (Extension to the Scheduled Areas) Rules, 2022 was heralded as a milestone for tribal self-rule; however, this report argues that the substantive provisions of these Rules frequently dilute the statutory intent of the Central Act. Through a detailed examination of legal texts, administrative practices, and empirical case studies including the resource conflicts in Hasdeo Arand, the militarization of Silger, and the sovereignty assertions of the Pathalgadi movement, this paper evaluates the efficacy of the Gram Sabha as an institution of self-governance.

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The analysis reveals a systemic pattern where bureaucratic control, corporate mining interests, and security narratives systematically overshadow the constitutional mandate of "consultation" and "consent." By contrasting the statutory promise with empirical realities regarding land acquisition, minor forest produce, and customary dispute resolution, this report highlights the structural impediments to genuine decentralized governance in Chhattisgarh's Scheduled Areas, concluding that without legal harmonization and political will, PESA risks remaining a "paper tiger" in the face of the state's extractive imperatives.

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**Introduction:-**

The state of Chhattisgarh, carved out of Madhya Pradesh on November 1, 2000, occupies a unique position in the Indian geopolitical landscape. It is at once rich in natural resources holding roughly 16% of India's coal deposits and significant iron ore reserves and demographically distinct, with a substantial tribal population governed under the protective umbrella of the Fifth Schedule of the Indian Constitution. The governance of these "Scheduled Areas," which cover vast swathes of districts like Bastar, Dantewada, Surguja, and Korba, is constitutionally mandated to be distinct from the general administrative framework (Ministry of Panchayati Raj, n.d.). This distinction is rooted in the recognition that Adivasi (indigenous) communities possess unique cultural, social, and economic systems that require protection from the homogenizing and often exploitative forces of mainstream development (Mishra, 2020). The central legislative instrument designed to operationalize this protection is the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, widely known as PESA. The Act was born out of the realization that the standard model of Panchayati Raj, introduced by the 73rd Constitutional Amendment in 1992, was insufficient for tribal areas as it emphasized a three-tier representative structure rather than direct, face-to-face democracy.

However, the trajectory of PESA in Chhattisgarh has been characterized by a profound paradox. While the state's political rhetoric has frequently invoked the slogan of "Mawa Nate Mawa Raj" (Our Village, Our Rule), the administrative reality has been one of delay, dilution, and denial. For over two decades post-statehood, Chhattisgarh failed to frame specific rules to implement the Central PESA Act, relying instead on ad-hoc adaptations of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993. This legislative vacuum was not benign; it created a fertile ground for ambiguity, allowing state executives to bypass mandatory consent provisions, particularly in matters of land acquisition for mining and industrial projects. It was only in August 2022, nearly 26 years after the central enactment that the Chhattisgarh government finally notified the Chhattisgarh Panchayat Provisions (Extension to the Scheduled Areas) Rules, 2022. While politically celebrated as a realization of tribal rights, the Rules have faced intense scrutiny from legal experts, civil society, and tribal organizations who argue that the new framework bureaucratizes the Gram Sabha and subordinates its powers to the District Collector (Teer Foundation, 2024).

**Historical Context and Constitutional Evolution:-**

The governance of tribal areas in India has evolved through a complex history of colonial isolation, post-colonial integration, and eventual constitutional protection. To understand the current challenges of PESA in Chhattisgarh, one must locate them within this historical continuum. During the British Raj, tribal areas were often classified as "Excluded" or "Partially Excluded" areas, a policy of isolation ostensibly designed to protect tribes but primarily used to secure state control over timber and mineral resources. This legacy persisted into the independent Indian Constitution through the Fifth Schedule, which provided for a Tribal Advisory Council and gave the Governor sweeping powers. However, in practice, the Governor's powers were rarely exercised independently of the state cabinet, leading to a situation where protective mechanisms remained dormant while the extractive machinery of the state expanded. By the 1990s, displacement due to development projects had alienated tribal communities, necessitating the Bhuria Committee's recommendation for a decentralized framework where the Gram Sabha would be the supreme power center.

When Chhattisgarh was formed in 2000, it inherited the legal framework of Madhya Pradesh. While the PESA Act was technically in force as a central statute, its implementation required state-specific rules to define procedures. The delay in framing these rules had profound implications. In the absence of state rules, officials often argued that the specific mechanisms for Gram Sabha consent were undefined, allowing them to proceed with land acquisitions under general laws like the Coal Bearing Areas Act, 1957 or the Land Acquisition Act, 1894. This period saw the allocation of massive coal blocks in the biologically diverse Hasdeo Arand region and the expansion of iron ore mining in Rowghat, often in direct violation of the spirit of PESA. The state's reluctance to notify rules was widely interpreted by activists as a deliberate strategy to maintain a "flexibility" that favored industrialization over tribal rights.

**The 2022 Chhattisgarh PESA Rules: A Critical Legal Analysis:-**

The notification of the Chhattisgarh Panchayat Provisions (Extension to the Scheduled Areas) Rules, 2022 on August 8, 2022, was a long-awaited development. Ostensibly, these rules were framed to operationalize the central mandates. However, a granular textual analysis of the Rules reveals significant departures from the spirit of the Central Act 1996, often introducing bureaucratic caveats that dilute the Gram Sabha's authority. The most contentious aspect is the framework for land acquisition. Under Section 4(i) of the Central Act, the Gram Sabha must be "consulted" before land acquisition. Rule 8 of the Chhattisgarh PESA Rules 2022 governs this process,

stating that the Gram Sabha shall be consulted. However, the procedural mechanics introduce a critical weakness: if the Gram Sabha raises an objection, the Rules empower the District Collector to hear and dispose of these objections. Legal activists argue that by designating the Collector who is often the agent of the state pushing for acquisition as the appellate authority, the Rules effectively nullify the concept of “Prior Informed Consent,” reducing it to a procedural formality (Teer Foundation, 2024). Furthermore, the Rules introduce bureaucratic layers in the constitution and functioning of the Gram Sabha. While Rule 4 and 5 mandate that 50% of the quorum must be tribal, the formation of separate Gram Sabhas for smaller hamlets is subject to the Governor’s order, creating an administrative bottleneck. Rule 19 establishes the Resource Planning and Management Committee (RPMC) to manage natural resources, but Rule 26 requires the Gram Sabha to “inform” the Forest Department if it wishes to market Tendu leaves on its own, implicitly subjecting the sovereign owner of the produce to the regulatory control of the department. Additionally, Rule 14 provides that appeals against Gram Sabha decisions lie with the Sub-Divisional Officer (Revenue), a provision that legally subordinates a constitutional body (the Gram Sabha) to a mid-level executive bureaucrat, fundamentally undermining the principle of self-governance.

#### **Institutional Challenges and Administrative Bottlenecks:-**

Beyond the text of the laws, the implementation of PESA in Chhattisgarh is hampered by deep-seated institutional challenges and administrative resistance. A pervasive challenge is the reduction of the Gram Sabha to a “rubber stamp” for state decisions. Administrative officials, such as the Panchayat Secretary, often control the logistics of meetings, drafting agendas and minutes that align with state interests rather than community will. There are widespread reports of manipulation where signatures of tribal attendees, collected on blank papers or attendance registers, are later attached to resolutions granting consent for mining or land acquisition. This fraud is facilitated by low literacy rates and the lack of independent resources for the Gram Sabha, which has no secretariat or funds of its own. PESA implementation is also obstructed by conflicting central and state legislation. The Coal Bearing Areas (Acquisition and Development) Act, 1957 (CBA Act) is frequently used to bypass PESA provisions entirely. The state argues that because the CBA Act is a specific central act for coal, it overrides the general provisions of PESA regarding consultation and consent. Similarly, the distinction between “major” and “minor” minerals allows the state to retain exclusive control over coal and iron ore, leaving Gram Sabhas with powers only over less significant minerals like sand and stones. This legal maneuvering ensures that the most lucrative and destructive extractive industries operate outside the effective control of the tribal communities they impact (NewsClick, 2022).

#### **Resource Governance: Land, Forest, and Minerals:-**

The litmus test for PESA in Chhattisgarh is the governance of natural resources. The state’s political economy is heavily dependent on mining revenue and forest produce, creating a direct conflict of interest with the PESA mandate of tribal autonomy. In the context of Minor Forest Produce (MFP), particularly the lucrative Tendu leaf trade, the Gram Sabha is theoretically the “owner.” However, the trade remains nationalized in practice. While the 2022 Rules allow Gram Sabhas to trade, bureaucratic hurdles such as the requirement for transit permits and adherence to forest department “working plans” effectively block autonomy. Unlike in Maharashtra’s Gadchiroli district, where Gram Sabhas have successfully conducted independent auctions and earned significant revenue, Chhattisgarh’s villages largely remain dependent on the state federation’s bonus system due to these structural impediments (Putul, 2022).

#### **Case Studies of Conflict and Resistance:-**

The theoretical challenges of PESA are starkly visible in specific conflicts across the state. In the Hasdeo Arand forest region, rich in biodiversity and coal, villagers have been protesting against mining for over a decade. The conflict centers on the allegation that the “consent” of the Gram Sabha required for the Phase II expansion of the Parsa East Kete Basan (PEKB) mine was fabricated. Villagers claim meetings were never held or attendance registers were forged. In a significant blow to tribal rights, the Community Forest Rights (CFR) title granted to Ghatbarra village was cancelled by the district administration in 2016, a decision upheld by the Chhattisgarh High Court in 2025. This judgment effectively ruled that executive allocation of resources to corporations could retrospectively annul statutory rights recognized under the Forest Rights Act and PESA (The Hindu, 2025). In the insurgency-affected Bastar region, the implementation of PESA is heavily securitized. The Silger protest in 2021 highlighted the conflict between security narratives and tribal autonomy. Villagers protested the establishment of a CRPF security camp on community land, arguing it was set up without the Gram Sabha’s consultation or consent as mandated by PESA. The state justified the camp as necessary for anti-Naxal operations and development, leading to a police firing that killed three tribals. This case demonstrates how, in “disturbed areas,” security imperatives are used to suspend the constitutional rights of the Gram Sabha, treating assertions of autonomy as “anti-national”

activities (Land Conflict Watch, 2021). Similarly, the Rowghat Iron Ore project in Kanker and Narayanpur districts has been a flashpoint for decades. Designed to supply the Bhilai Steel Plant, the project involves mining and railway construction in sensitive tribal areas. Local communities allege that environmental clearances and forest diversions were processed without genuine Gram Sabha resolutions. Reports indicate that consent is often obtained through coercion, with “Vikas Samitis” (Development Committees) funded by mining companies set up to bypass the statutory Gram Sabha and manufacture compliant leadership structures (The Quint, 2022).

### **The Pathalgadi Movement and Assertions of Sovereignty:-**

The failure of the state to implement PESA in letter and spirit gave rise to the radical Pathalgadi movement, which spread from Jharkhand to the tribal districts of Chhattisgarh (Jashpur, Sarguja) around 2017-18. Tribals erected large stone slabs (Pathals) at village entrances inscribed with provisions of the Constitution and PESA, declaring the Gram Sabha as the sovereign authority and prohibiting the entry of “outsiders,” including government officials and police, without permission. The state criminalized the movement, labeling leaders as seditious. However, the movement fundamentally represented a desperate assertion of the “Constitution within the Constitution” that PESA promised but failed to deliver, highlighting the deep alienation caused by the state’s disregard for tribal self-rule (Singh, 2019).

### **Conclusion:-**

The implementation of the PESA Act in Chhattisgarh represents a profound paradox of Indian democracy. On paper, the notification of the 2022 Rules signifies the operationalization of a revolutionary democratic experiment. In practice, however, the governance of Scheduled Areas remains characterized by “controlled decentralization,” where the state devolves responsibilities without devolving power. The analysis reveals a deliberate design to retain bureaucratic control over high-value resources like land and minerals, while permitting Gram Sabhas to manage lower-stakes social issues. There are, however, pockets of hope. In villages like Chainpur (Sarguja), Gram Sabhas have utilized the new rules to successfully ban liquor and tobacco, managing the ban through women’s committees and fines (Kaiser, 2024). Such examples demonstrate that PESA can be an effective tool for social reform when not in direct conflict with the state’s heavy industrial interests. Yet, for PESA to transition from a “paper tiger” to a genuine instrument of self-rule, Chhattisgarh must move beyond the colonial mindset of “administering” tribal areas. Structural reforms are urgently needed, including the legal harmonization of state laws with PESA, ensuring binding consent for all land acquisitions, and dismantling the bureaucratic monopolies over forest produce. Until these shifts occur, the promise of decentralized governance in the Fifth Schedule areas will remain unfulfilled.

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