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Chapter - 7
**Fifth Scheduled Areas and Panchayat (Extension
to Scheduled Areas) Act (PESA), 1996: A Tribal
Issue in the State of Goa**

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Chapter - 7

Fifth Scheduled Areas and Panchayat (Extension to Scheduled Areas) Act (PESA), 1996: A Tribal Issue in the State of Goa

Dr. Vijay Madhu Gawas

Abstract

The contemporary paper makes a shy endeavoring to study the provisions of the Panchayat (Extension to Scheduled Areas) Act (PESA), 1996. In order, to modest effort to examine the provisions from the perspective of land alienation, displacement and various development projects which as generously and adversely affected to the Tribal communities of Goa. This paper has outlined the provision of fifth scheduled, and Panchayat (Extension to Scheduled Areas) Act (PESA), 1996. This current paper makes efforts to bring into the notice that the failure of commitment for Non-Implementation of fifth Scheduled and Panchayat (Extension to Scheduled Areas) Act (PESA), 1996 in the state of Goa. For this purpose, the secondary source data from books, articles, journal, newspaper etc. have been used.

Keyword: Fifth scheduled, PESA, Act, displacement, non-implementation

Introduction

India is among scarce nations in the world with an ample tribal population in different parts of the country. Around 750 different tribal communities notified as Scheduled Tribes ^[1], and only 258 tribal communities speaking about 106 different languages in different parts of the country ^[2]. About 80 percent of tribal populations are to be found along the Central India belt and the rest 20 percent are in the North-Eastern States, Southern States and Island groups ^[3]. As per 2011 census, the tribal population of the

¹ <http://hdl.handle.net/10603/225100>, dated 12/06/2023

² Ibid

³ C Aswathy, S Dasana, B Vijayan, (201), social exclusion of tribal agricultural labourers: the case of Adiya tribal community of Wayanad District, published Aasian Journal of Agricultural Extension Economics and Sociology, volume- 23, issue(4)

country is 10.43 crore, constituting 8.6% of the total population. The sex ratio for the overall population is 940 females per 1000 males and that of Scheduled Tribes 990 females per thousand males ^[4].

In India, the tribes have been designated as "Scheduled Tribes" under the Constitution. There is a procedure for including Tribal groups in the Constitutional list of Scheduled castes and Scheduled Tribes order. According to Lokur Committee (1965) the essential characteristics are: Indication of primitive traits, geographically isolated, a distinct culture, and shyness of contact with the community at large, and economically backward Communities are notified as Scheduled Tribes under Article 342 of the Constitution ^[5].

Sizable tribal population of Goa excluded from the benefits of fifth scheduled areas

The Tribal Communities of India are collectively identified under Article 342(1) & (2) as Scheduled Tribes. Their right to self-determination guaranteed by Part-X of the Indian Constitution contains the article-244 & 244 (a) ^[6]. Meanwhile the state and Central Government is supposed to protect tribal interests of Goa, especially tribal rights over land and Natural Resources through applying or notifying the Fifth Scheduled Areas of under Article 244(1) of the Constitution. But the state of Goa are applicable only the Fifth Scheduled Areas under 244(1), and not a Sixth Schedule Areas of Article 244(2) of the Constitution.

The Fifth Scheduled Areas is important for the state of Goa, it means to administration and control of the Scheduled Areas and Scheduled Tribes in any State (other than the states of Assam, Meghalaya, Tripura, and Mizoram) ^[7]. The sixth Schedule area contains provisions as to the administration of tribal areas which are applicable in the states of Assam, Meghalaya, Tripura, and Mizora ^[8]. According to this law gives more freedoms to the autonomous regions, districts in terms of legislative, and executive power.

The Small State like Goa has a total population of 15 lakes as per the 2011 census, of which 38% live in rural areas and 62% in urban area. The Central government had notified three groups as Scheduled Tribes namely

Gawda, Kunbi and velip Community. According to Census 2011, the total number of Tribal population in Goa is 1, 49,000 which is 10.23 per cent of total population of Goa ^[9]. So far as the population strength of tribal's in the state of Goa are applicable under the Fifth Scheduled Areas and it may be concerned the same may be seen from table given below:

Table 1: Scheduled Tribe population per Census 2011

State	Scheduled Tribe population per Census 2011		
	Total	Rural	Urban
Goa	1,49,275	90,372	58,903

Source: Date collected from Directorate of tribal welfare, Government of Goa, Panji-Goa.

Table 2: Taluka wise Scheduled Tribes Population in North-District of Goa as per 2011 Census

Sr. No.	Name of the Taluka of North-District	Total Population of Scheduled tribes.	%
1.	Tiswadi	18,785	10.60
2.	Bardez	1654	0.70
3.	Pernem	46	0.06
4.	Bicholim	4492	4.59
5.	Sattari	4030	0.33
6.	Ponda	27599	16.64
7.	Total	56606	6.92

Source: Date collected from Directorate of tribal welfare, Government of Goa, Panji-Goa.

Table 3: Taluka wise Scheduled Tribes Population in South-District of Goa as per 2011 Census

Sr. No.	Taluka of North-District	Total Population of Scheduled tribes	%
1.	Salcete	29242	10.54
2.	Mormugao	10190	5.94
3.	Sangum	9261	23.82
4.	Quepem	25290	31.15
5.	Canacona	13657	30.23
6.	Dharbandora	5029	19.14
7.	Total	92669	14.47

Source: Date collected from Directorate of tribal welfare, Government of Goa, Panji-Goa.

⁹Gawas.Vijay Madhu, (2017), Analysis of the beneficial provisions of constitutional fifth schedule for tribal development, published International Journal of Law, Volume 3, Issue 4, Page No. 248-253

⁴ <https://vikaspedia.in/social-welfare/scheduled-tribes-welfare/scheduled-tribes-in-india>, dated 14/06/2023

⁵ <https://www.drishtias.com/> dated 30/06/2023

⁶ Ibid

⁷ <https://azpdf.tips/child-rights-education-for-inclusion-and-protection-pdf-free.html> dated 12/07/2023

⁸ <https://advocatetanmoy.com/> dated 21/07/2023

Table 4: District wise distribution of literate population among the Scheduled Tribe - 2011 Census

Sr. No.	State /District	Total ST Population	0-6 ST Population	Total Literate ST Population	Literacy Rate
1.	Goa	149275	14908	106334	79.14
	Males	72948	7573	56982	87.16
	Females	76327	7335	49352	71.53
2.	North Goa-District	56606	5253	42905	83.55
	Males	27824	2681	23000	91.48
	Females	28782	2572	19905	75.94
3.	South Goa-District	92669	9655	63429	76.41
	Males	45124	4892	33982	84.47
	Females	47545	4763	29447	68.83

Source: Data collected from Directorate of tribal welfare, Government of Goa, Panji-Goa.

The literacy data above Table 4, shown that the Scheduled Tribe population of the state has made significant improvement in literacy during the decade 2001-2011. The total literacy rate of Scheduled tribes in the state of Goa was increased by 79.14 and percentage points in 2001, census. But highest Male literacy rate (87.16%) and lower female literacy rate was (71.53%) in the state of Goa. At the district level, the highest literacy rate has been recorded in North Goa-District (83.55%) and the lowest in South Goa-District (76.41%). The effective literacy rate among the scheduled tribe highest Male literacy (91.48%) and lowest female literacy (75.94%) are recorded North-Goa District. Secondly, the highest Male literacy (84.47%) and lowest female literacy (68.83%) are recorded South-Goa District ^[10].

Currently, only 10 States having Fifth Schedule Areas namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha ^[11], Rajasthan, Telangana except the state of Goa. The criteria are very simple for declaring an area as Scheduled Area are

- Preponderance of tribal population.
- Compactness and reasonable size of the area.
- Under-developed nature of the area.

¹⁰ Ibid at 9

¹¹ <https://byjus.com/free-ias-prep/upsc-exam-comprehensive-news-analysis-aug10-2021/> dated 24/07/2023

d) Marked disparity in economic standard of the people ^[12].

The Government make effort to apply the Special Provisions for Fifth Schedule Areas in the state of Goa. The Scheduled Tribes of Goa able to get the benefits, which indicates in the Part 4: that the Fifth Schedule provides for the establishment of a Tribes Advisory Council (TAC) in the Scheduled Areas. In case, if the President so directs, there will be established a TAC in a State having Scheduled tribes but not Scheduled Areas therein, consisting of not more than twenty members of whom, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. If the number of representatives of the STs in the Legislative Assembly of the State is less than the number of seats in the TAC to be filled by such representatives, the remaining seats shall be filled by other members of those Tribes ^[13].

The Tribes Advisory Council (TAC) advice on such matters pertaining to the welfare and the advancement of the STs in the State as may be referred to them by the Governor ^[14].

The Governor may make rules prescribing or regulating

- The number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants there of ^[15].
- The conduct of its meetings and its procedure in general.
- All other incidental matters.

The Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of the State shall or shall not apply or any part thereof in the State ^[16], subject to such exceptions and modifications, as specified. The Governor may make regulations for the peace and good government of any area in the State ^[17].

Such regulations may

- Prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area.
- Regulate the allotment of land to members of the STs in such area.

¹² Shreyashi Trisha, Kumar Gourav, Pardeshi Krishna Kishor, (2022), Elwin's Panchsheel & Indian Tribal rights: Paper Tiger Laws, published in burnished law journal Volume -3 Issue- 3.

¹³ Ibid at 8

¹⁴ Ibid at 11

¹⁵ <https://aasc.assam.gov.in/> dated 21/07/2023

¹⁶ Ibid at 4

¹⁷ See, supra Note13

- c) Regulate the carrying on of business as money-lender by persons who lend money to members of the STs in such area ^[18].

In making such regulations, the Governor may repeal or amend any Act of Parliament or of Legislature of the State or any existing law after obtaining the assent of the President. No regulations shall be made unless the Governor, in case a Tribes Advisory Council (TAC) exists, or consults such Tribes Advisory Council (TAC) ^[19].

Role of the governor in the fifth scheduled area

Under the powers conferred by the Fifth Schedule, the Governors can not only direct that any particular law or part thereof may not apply to a Scheduled Area that can also make regulation for good governance and peace in these areas. The Governors can intervene in areas relating to Prohibition or Restriction of the transfer of land by or among Scheduled Tribe members; regulation of allotment of land in such areas; and the regulation of money-lending activities ^[20]. The Governor has basically been given the legislative power to make regulations for the "peace and good government of any area which is a scheduled area ^[21]". The peace and good government are words of very wide importance and give wide discretion to the Governor to make laws for such purpose ^[22].

Under the provisions of para-3 of the Fifth Schedule wherein the Governors of Scheduled Areas States are expected to make an assessment of the administration of the Scheduled Areas and send an annual report to the President of India ^[23]. The said reports should also deal with the observations made by the Tribal Advisory Council of the State and indicate steps taken with respect to the recommendation of the TAC ^[24]. The annual report would help the Ministry to evaluate the progress that has taken place in the Scheduled Areas of the States ^[25].

¹⁸ Ibid at 15

¹⁹ See, supra Note 16

²⁰ Ibid at 17

²¹ Report Land and Governance Under the Fifth Schedule, Minister of Tribal Affairs, Government of Goa, see, <https://tribal.nic.in/> dated 12/08/2023

²² See, supra Note 19

²³ <https://dokumen.pub/> dated 12/09/2023

²⁴ Ibid

²⁵ Ibid at 19

Significant of implementation of Panchayat (Extension to Scheduled Areas) Act (PESA), 1996 in the state of Goa

"PESA is a classic embodiment of Nehru's 1st and 4th panchsheel principle of avoiding outside imposition while allowing self-governance, working along with the tribal communities' own social and cultural institutions, while conserving their customs and traditions. In principle, the PESA is a great piece of legislation for providing safeguards and protection to tribal communities and limiting outside interference in decision making which directly affects them" ^[26]. In 1992 the Village level democracy turned into an actual vision for India, after execution of the 73rd amendment of Indian Constitution. According to this amendment the mandated stated, that resources, accountability and decision making be passed on from central government to the lowest unit of the governance i.e the Gram Sabha or the Village Assembly ^[27]. There are three level structure of local self-government was envisaged under this amendment. When the laws do not automatically cover the scheduled areas, then the central Government enacted the PESA Act on 24th December 1996 to enable Tribal Self Rule in these areas ^[28].

The important feature of Panchayat (Extension to Scheduled Areas) Act (or PESA), 1996 intend to orthodoxy with the customary law, social and religious practices and traditional management practices of community resources ^[29]. While the tribal group of habitations embracing a community to managing the affairs in accordance with traditions and customs. It intend to have a separate Gram Sabha to preserve the tribal traditions, customs, cultural, identity, community resources and the customary mode of dispute resolution ^[30]. According to this act, it stated that the Gram Sabhas have important roles and responsibilities to approve all development works in the village level ^[31].

The Panchayat (Extension to Scheduled Areas) Act (or PESA), 1996 have specified the several provisions about the powers to manage minor water bodies; power of mandatory consultation in matters of land acquisition; resettlement and rehabilitation and prospecting licenses/mining leases for minor minerals; power to prevent alienation of land and restore

²⁶ Ibid 12at P.11

²⁷ <https://documents1.worldbank.org/> dated 24/09/2023

²⁸ Lalima Singh, Cao Chenrui, 2017, The Problem Of Naxalism With Special Reference To Their Rights, published in Voice of Research, An International Refereed Journal for Change and Development, Volume 4, Issue 1,

²⁹ <https://shodhganga.inflibnet.ac.in/>

³⁰ Ibid at 24

³¹ Ibid at 29

alienated land; regulate and restrict sale/consumption of liquor; manage village markets, control money lending to STs; and ownership of minor forest produce^[32]. All decision can be taken at the Gram Sabhas or Panchayats level.

So the application of fifth Schedule Area and the Right to self-Rule in the state of Goa, are more significance and relevance of internal self-determination to the defense protection and promotion of tribal people group identify and dignity and their collective rights. The formal recognition of the relevance of the legislation of the provisions of the Panchayats (Extension to the Schedule Area) Act 1996 and imposing the fifth Scheduled Areas, where the tribal have their habitations. Hence, the honest implementation of the PESA Act in the state of Goa, it will give more funds for empower the tribal communities for their developmental^[33]. Under the PESA Act, section 4 (b), a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. Under the PESA Act, {section 4 (c)}, every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level^[34].

Discussion

At present the functioning of panchayats in tribal areas of Goa under the provisions the Goa Panchayat Raj Act, 1994 was enacted by the Goa Government. The Panchayat Extension to Scheduled Areas Act (PESA), 1996, was passed by Parliament and came into effect on 24th December, 1996 based on Bhuria Committee Report. The except state of Goa, the act extends to the tribal areas of nine states, namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Odisha, Rajasthan and Chhatisgarh^[35].

In 1974-75 under five year plan, the Tribal Sub-Plan was implemented with a strategy for the development of tribal areas. The vision of the Tribal Sub-Plan to planning process for earmarking a portion of funds for tribal development. It ensure the share of the Central Plan allocations, subsequently the States underway the notification of tribal areas. However,

³² Ibid 31 at p.77

³³ <https://m.moam.info/panchayat-raj-extension-to-scheduled-areas-undp-united> dated 25/09/2023

³⁴ Ibid at 32

³⁵ Mohapatra Bishnu Prasad, 2018, Panchayats under the PESA Act in Odisha - A Study of Two Gram Panchayats Journal of Governance & Public Policy, Volume 8 No 2 July-December 2018 ISSN 2231-0924 atp.48

the money infrequently reached to the tribal areas. However, the PESA Act of 1996 has empowered the local village level Panchayats, particularly the Gram Sabhas in the Fifth Schedule tribal areas to act as local bodies of self-governance^[36].

The Power of Panchayat (Extension to Scheduled Areas) Act, 1996, (PESA) is the most important law for the tribal people in Goa. In case this Act, is implemented honestly than radically change the socio-political landscape of tribal people in Goa. Simultaneously, it can achieve three things to remove the backwardness and poverty, bring tribal people into the mainstream political current through self-governance and preserve forests and local ecology. Unfortunately, state governments lack willpower, honesty and far-sightedness to grasp the profound impact its proper implementation for the future development of Scheduled Tribes^[37].

Apart from last many decades, Goa has not attained significant marks in the areas of economic growth, cultural integration and political interests^[38]. However, the large number of the tribal people in the state of Goa has been incapable to protect themselves against the natural resources and minerals of their own lands. The geographical distance and remoteness of their habitat offered them some protection^[39].

Due to lack of political will power to properly implement PESA provisions and imposing the fifth Schedule area in the state of Goa. The inherent hurdle in the effective implementation of the PESA Act and imposing the fifth Schedule area not handled properly at the state and Central level. In fact, the implementation process vested in two different ministries of the Union Government i.e. Ministry of Panchayati Raj and the Ministry of Tribal Affairs^[40].

The state Government has failed to implementation of PESA to provide sense of security and relief to the tribal community living on the lands. The

³⁶ Rao K. Annamani, 2018, A Study on Empowering Scheduled Tribes towards Political Process in India, published IOSR Journal Of Humanities And Social Science (IOSR-JHSS) , Volume 23, Issue 1, Ver. 7, PP 58-63 e-ISSN: 2279-0837, p-ISSN: 2279-0845

³⁷ Report Of The High Level Committee On Socio-Economic, Health And Educational Status of Tribal Communities Of India, 2014, published by Ministry of Tribal Affairs Government of India, see, <https://cjp.org.in/wp-content/uploads/2019/10/2014-Xaxa-Tribal-Committee>

³⁸ Singh Waheguru Pal, Sidhu Pratap, Bhanu Mehta, Bruce Jones, (2013), Shaping the Emerging World India and the Multilateral Order, published by the Brookings institution 1775 Massachusetts Avenue, N.W., Washington, D

³⁹ Ibid at 28

⁴⁰ Brahma Ashok, (2019), Safeguarding the Rights of Indigenous Peoples in India, published by IOSR Journal of Humanities And Social Science (IOSR-JHSS) Volume -24, Issue 6, e-ISSN: 2279-0837, p-ISSN: 2279-0845

colonial Land Acquisition Act of 1894 are invoked to take away tribals' individual and community lands by state officials to handed land over to private companies for mega projects ^[41]. The state Government has mindful neglect for implementation of PESA Act, and fifth Scheduled areas because it would put an end to mining and other projects. Therefore, tribal communities away from protective laws like PESA and fifth Scheduled areas, and the state deliberate mining/industrialization process because its immense profitability skews the political and administrative agenda ^[42].

According views of points on research has identified the basic problems of tribal people in the state of Goa. And therefore, it suggested based on sizable Tribal population it indicate in the Table No. 1, 2 3, and 4, need to implementation of PESA and notified the fifth Schedule Area in the state of Goa, because it will bring socio-economic development changes in the tribal Areas. There are many benefits of PESA and fifth Schedule Area to enhance tribal people's participation in decision making. The PESA and fifth Schedule Area aim to better control over the utilization of public resources, reduce alienation in tribal areas, reduce poverty and out-migration among tribal population, control and management of natural resources and improve the tribal livelihoods and incomes. As result of the implementation of PESA and fifth Schedule Area verified the illegal land alienation and also help to restore the unlawfully alienated tribal land. And most important things that PESA and fifth Schedule Area to promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population ^[43].

Conclusion

The PESA and fifth Scheduled areas are largely ignored by the State government. The main hurdle for proper implementation of PESA and fifth Scheduled areas are from the nexus of bureaucrats and politicians fear lose the controlled in the tribal areas in the state of Goa. The states like Goa have the resource rich tribal area as the source of revenue. It realizes that forests are the only source of sustenance for tribals. Most of the vast tribal areas in other talukas, and the tribals are primarily dependent on the forest lands. Every tribal organization and tribal Groups need to Force state governments to implement the PESA Act, and fifth Scheduled areas to deal a fatal blow to the left-wing extremists thriving on their backwardness, ignorance, and isolation ^[44].

⁴¹ Ibid at 39

⁴² See, supra Note 40

⁴³ Ibid at 34

⁴⁴ Ibid at 42

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Chapter - 8

Impact of COVID-19 on Dietary Choices and Food Habits

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