

**Workshop on PESA Act &
Rules for MPDOs and Divl.
Panchayat Officers.
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Andhra Pradesh Profile

- Total Rural Population: 3.54 Crores
- Total GPs: 12919
- Total Districts covered by PESA: 5/13(Coastal -North Coastal Andhra)
- Total Mandals covered by PESA: 36/660
- Total GPs covered by PESA: 588

Schedule V Areas-PESA

- The Schedule V Areas covering 10 States, are characterized by poverty, illiteracy, weak infrastructure and deprivations in general.
- SAs are notified under Art 244(1) of Indian Constitution.
- 73rd constitutional Amendment came in to force 1993.
- Art 243(M) exempted the application of 73rd constitutional amendment to Schedule V Areas.
- A High Power Committee headed by Bhuria was Constituted in 1994 to recommend the exceptions and modifications to IX of the Constitution (73rd constitution) in its application to Schedule V Areas..
- Panchayat Extension to Scheduled Areas Act, 1996(PESA) was enacted to empower the tribals with special powers of self governance through Gram Sabhas.

PESA Legal Framework

- Central PESA is a legal framework (mandatory) for States enabling States to enact Laws within the framework. (Local Bodies-State subject)
- Clear definition to Village.
- Central PESA expects the States to legislate redesigning the local governance admn. structures on the pattern of VI th Schedule, for self autonomy.
- PESA recognizes the competence of GS(it is self created, self defined and managed)

Union Govt- Directions:

- The Ministry of Panchayati Raj (Govt of India) in May 2010 directed all the PESA States **‘should’** take steps for effective implementation of PESA Act 1996.
- The directions including, adoption of Model PESA Rules circulated by MoPR;
- Amendment to the State PESAs in consonance with central PESA, and also related laws, rules and executive instructions on Mines, MFP; Excise, Money Lending etc.(Ministry of Panchayat Raj (GoI) Letter (No. N-11012/1/2007-PESA (Pt), dated 26th,May 2010.)

Broad sets of powers of GS/GP/MPP

- Managerial Powers/Competency
- Administrative/Recommending /Audit powers
- Quasi Judicial and Regulatory Functions

Managerial Powers/Competency

- Community Resources(GS)
- Ownership (includes Management) of minor forest produce.(GS)
- Planning and Management of minor water bodies.(GS/GP/MPP)
- Manage Village Markets.(GP)

Administrative/Recommending/ Audit powers

- Consultation prior to acquisition of land and R&R.(MPP)
- To grant mining lease or prospectus license or concessions for exploitation of minor minerals etc.(GP)
- Approval of socio, economic development programs.(GS)
- Identification and selection of beneficiaries.(GS)
- Issue of utilization certificates for works done(GS).

Quasi Judicial and Regulatory Functions

- Customary mode of dispute resolutions (and Safeguarding and preserving traditions , customs) (GS)
- Control over money lending (GS)
- Prevent tribal land alienation and restoration of alienated land. (GS)
- Regulate the use of intoxicants. (GS)
- Control over local institutions and functionaries. (MPP, GP, GS)

Major Challenges-Time line

- State PESA Law (**1998**) is not in conformity with Central PESA.
- Related Statutory Laws on the subject are not amended in tune with the State PESA provisions.
- **After 13 years:** Rules (GO Ms No66) were framed under State PESA in 2011. Rules are not in conformity with Central or State PESA Laws
- **After 15 Years:** GSs notified in 2013 (Notified GSs are not according to the letter and spirit of PESA Act)
- Operationalisation of GS is not yet commenced with true spirit.

**The Andhra Pradesh Panchayat Raj
Extension to Scheduled Areas Rules, 2011**

Definitions

1. 'Act' means the (Act No.7 of 1998-PESA).
2. 'Gram Sabha' means a Gram Sabha which comes into existence under Rule 4.
3. 'Minor water bodies' means natural water bodies used for fetching drinking water, construction of check dams and irrigating an extent of land up to 40 hectares.
4. 'Scheduled Areas' means the Scheduled Areas notified under Fifth Schedule of the Constitution of India.
5. Commissioner means Commissioner Tribal Welfare.

Declaration of village

- Commissioner requests District Collector to draw up a list of villages in the scheduled areas of the State.
- A village may consist of a habitation/hamlet or groups thereof comprising of a community or communities managing their affairs in accordance with their traditions and customs.
- On receipt of such requisition, the District Collector in consultation with PO, ITDA may prepare a proposal consisting of villages .
- The proposal prepared shall be submitted to the Commissioner. The Commissioner on review of the proposal will declare the villages in scheduled areas.

Gram Sabha and functions

1. Every village shall have a Gram Sabha comprising of adult members, whose names are included in the electoral rolls at the village level.
2. The Sarpanch of the Gram Panchayat shall be the President of the Gram Sabha. The Gram Sabha shall elect a Vice President and Secretary as per the procedure prescribed below.
3. PO of the concerned ITDA shall depute an officer not below the rank of a Deputy Thasildar for convening the first Gram Sabha.
4. The meeting so convened shall be presided over by the Sarpanch of the concerned Panchayat.
5. In the absence of Sarpanch Traditional village elder/ Self-Help Group of the habitation may preside over the Gram Sabha.

Quorum and Proceedings before Gramsabha

- The quorum for the Gram Sabha meeting shall be not less than 1/3rd of members of Gram Sabha of whom atleast 50% shall be ST members.
- The Gram Sabha shall elect a Vice President and Secretary from among the members of the village by show of hands. They shall be Scheduled Tribe and their tenure - 5 years.
- At least two statutory meetings of Gram Sabha in a year. As many as meetings can be conducted in addition to statutory meetings at a place and time as decided by the Gram Sabha.
- An attendance register shall be maintained in which the presiding Member shall obtain the signatures or thumb impressions.

- At the end of each meeting the presiding Member shall read the proceedings of the Gram Sabha and get the approval of the Members.
- Each item of resolution should be recorded separately and approval or otherwise of the Gram Sabha shall be obtained. The Members shall raise their hands in token of their approval.
- Resolutions passed shall be recorded in a register and signatures / thumb impressions as the case may be of members shall be taken by the Secretary / Vice President of Gram Sabha.
- The Resolutions shall be communicated to the concerned department of the Government / Agency / Organization by the Secretary of Gram Sabha within (4) weeks.

Matters for consideration before Gramsabha

- a) village agricultural production plans;
- b) list of the location of the common lands in the villages i.e. Porambokes etc.
- c) list of transfers of ownership of houses and other immovable properties;
- d) Approved budget estimates of the Gram Panchayat;
- e) Audit report on the accounts of the Panchayat;
- f) A list of defaulters, who are in arrears of payment of taxes and fees due to Gram Panchayat;

Gram Sabha shall review.

- a) functioning of fair price shop / D.R.Depot
- b) functioning of Anganwadis
- c) functioning of sub centers
- d) functioning of schools
- e) functioning of welfare hostels
- f) provision of drinking water
- g) provision of electricity and
- h) any other development programmes

Other functions

- The Gram Sabha shall prepare and approve socio economic profile of each family.(human and natural resources of the village, literacy levels, landless families, woman headed families, benefits so far secured with the details of their present status, village problems, prioritization etc by employing Participatory Rural Appraisal tools)
- The Gram Sabha shall be involved in the identification and implementation of individual/community development programmes.
- The MPP may seek the advice of/assistance from the Multi Disciplinary Teams constituted by the P.O ITDA concerned or any other Government Agency in preparation of **Village development plans and prioritizing the benefits and schemes.**
- The Gram Sabha shall furnish certificate of utilization of funds to the concerned agency/Government department for the funds released to it.

Acquisition of lands/MPP

- Government or the concerned authority will submit to the Mandal Praja Parishad the following written information along with the proposal:-
 - I. The complete outline of the proposed project including the possible impact of the project.
 - II. Proposed land acquisition.
 - III. New people likely to settle in the village and possible impact on the area and society, and
 - IV. The proposed participation, amount of compensation, job opportunities, for the people of the village.

- Mandal Praja Parishad will be competent to summon the representatives of the concerned authorities to examine them either individually or collectively. It will be mandatory for all such persons summoned to furnish point-wise clear and correct information.
- The MPP after considering all the facts **shall make a recommendation** regarding the proposed land acquisition and rehabilitation plan of persons displaced.
- The **recommendation** of the Mandal Praja Parishad **shall be considered** by the Land Acquisition Officer.
- In case of disagreement the Land Acquisition Officer again send to MPP for consideration.

- After such consultation the Land Acquisition Officer passes an order against the recommendations of the MPP he shall give in writing recording the reasons for doing so.
- In case of industrial projects, all the MPPs influenced by such projects shall be consulted.
- The progress of rehabilitation plan should be placed before the MPP after every 3 months from the date of notification for land acquisition.
- If suggested measures are not followed, the Mandal Praja Parishad may inform the State Government in writing regarding the same, and it will be mandatory for the State Government to take appropriate action.

R&R Package

- Each project affected family of ST category shall be given preference in allotment of land in the ayacut.
- Each tribal PAF shall get additional financial assistance equivalent to 500 days of minimum agriculture wage for loss of customary rights/usages of forest produce.
- Tribal PAFs will be re-settled close to their natural habitat of their choice, to the extent possible, in a compact block so that they can retain their ethnic, linguistic and cultural identity.
- The tribal families residing in the Project Affected Areas having fishing rights in the river/pond/dam shall be given fishing rights in the reservoir area.
- The tribal PAFs shall be resettled and rehabilitated within the Scheduled areas.

Management of Minor water bodies

1. The Gram Sabha shall be responsible for planning and management of minor water bodies of village, GP for people of GP; MPP for the people of GPs and Zilla Parishad for the common benefit of the people living in the Mandal Parishads.
2. The appropriate body shall be responsible for planning and management of water bodies which fall under the jurisdiction of 2 or more Zilla Parishads.
3. Planning of minor water body shall also include planning and construct of a new water body.

4. Management of minor water body shall include all works of repair, restoration for maintenance, fixing of ayacut season by season, levy of water rate, its collection and utilization.
5. The GP/MPP/ZP/Appropriate Government as the case may be, shall collect appropriate water rate and share it with the Water Users Associations concerned wherever they exist, in the ratio as mutually decided for taking up developmental activities there under.
6. The Government shall provide requisite amount every year for the maintenance of minor water bodies. This grant shall be on prorated basis and be transferred to the appropriate Panchayat account.

Minor minerals/GP

- (i) Only individual local ST or Local ST societies shall be entitled for grant of prospecting license or mining lease for minor minerals and grant of concession for exploitation of minor minerals by auction.
- (ii) The Mining Department shall refer all applications for license or lease to the concerned Gram Panchayat for their consideration.
- (iii) The Gram Panchayat shall forward its approval or reject the applications by passing an appropriate resolution within 4 weeks.
- (iv) The decision of the **Gram Panchayat shall be binding and final.**

Powers and functions of Gramsabha-Excise

- The Department concerned shall inform its intention to establish a unit for manufacturing liquor in a village to the Gram Sabha concerned for its opinion on the production or manufacture of liquor in the said village.
- Gram Sabha will convey its opinion in the form of a resolution within four weeks. Based on the resolution of the Gram Sabha the **department concerned shall act upon.**
- The Gram Sabha shall be consulted before the grant of any license to open liquor shop in the village.
- Gram Sabha will convey its opinion in the form of resolution within 4 weeks. The license shall be granted to **local scheduled tribe** only.

- The Department concerned shall issue a speaking order for granting or not granting any license to open liquor shop/bar in the village under intimation to the Gram Sabha concerned.
- The Gram Sabha **resolution shall be binding and final.**
- The Gram Sabha shall determine the quantity of traditional liquor that may be brewed/produced by the Scheduled Tribes living in a village for their consumption but not for sale during marriage and other social and religious ceremonies and their cultural identity.

Gram sabha-Ownership and disposal of minor forest produce

- 1. Ownership and mode of disposal of MFP of members of Gram Sabha shall be subject to monopoly rights of GCC, for procurement of MFP.**
- 2. GS settles the disputes** relating to ownership, access to collection, use and disposal of MFP by individuals
- 3. After verification of such claims on the right of ownership of the GS shall pass a resolution settling such dispute.**
- 4. The GS shall maintain a register** containing the names of each collector of MFP .

Gram sabha-Tribal land alienation cases

- (1) Powers of Gram Sabha:
 - a) Prepare list of landholders (extent; name of pattadars, enjoyers).
 - b) Verify whether Pattadar is a genuine ST
 - c) Verify –NTs Enjoying land in the name of a tribal woman. (benami).
 - d) Verify -at field level -Tribal/NT cultivations taken on lease, mortgage, etc.;
 - e) Approve the list of beneficiaries for assignment of Government lands.
 - f) if GS found that occupations of NTs are in violation of LTR it shall send a resolution mentioning details of violation to Competent Authority(CA) for action..

2. If there are conflicting claims in respect of the possession of lands, the Gram Sabha shall convene a meeting and call for evidence in support of such claims and pass appropriate resolutions requesting the authority under LTR to initiate consequential action.
3. On receipt of any complaint on alienation of land in favour of a non-tribal or suomotu pass appropriate resolution and forward the same to the CA under LTR to take necessary action to restore the land to the scheduled tribe transferor.
4. Any person aggrieved by the resolution of Gram Sabha may within a period of **sixty days** from the date of resolution, file a petition to the competent authority under the LTR .

- The Competent Authority(CA) under the LTR may either allow or reject or refer the petition to Gram Sabha(GS) for reconsideration.
- After receipt of such reference, the GS shall meet within thirty days, hear and pass resolution and forward to CA.
- The CA under LTR shall consider the resolution of GS and pass order either accepting or rejecting.
- The CA under the LTR shall invariably implead the GS as a party for its opinion in every land alienation case.

The CA under the LTR shall furnish the copies of judgments to the GSs concerned in every case.

- While restoring possession of land to tribal, the CA shall obtain the signature of a member of GS to that extent.

Management of markets/santhas

1. The Gram Panchayat Acts as the Market Committee to manage markets.
2. GP Functions:
 - a) Licenses should be given only to local STs.
 - b) Maintain and manage the market yards;
 - c) Regulate the opening, closing and suspending of transactions in a market yard;
 - d) Supervise the conduct of market functionaries;
 - e) Enforce the conditions of license;
 - f) Regulate the making, execution and enforcement or cancellation of agreements of sales, the weighment, delivery, payment and all other matters relating to the marketing products.

- (f) Disposal of minor forest produce include local level processing value addition, transportation in forest area through head load, bicycle and hand carts for use of such produce for sale by the gatherers or the communities for livelihood.
- (g) Provide necessary facilities for the marketing of agricultural produce, NTFP Produce, live stock or products of live stock in the market area;
- (h) provide for the settlement of all disputes arising out of marketing between the seller and the buyer.
- (i) collect, maintain and disseminate information in respect of :- prices and movement of notified agricultural produce, live stock or products of live stock etc.

3. production, processing and storage of notified commodities;

(j) Take all possible steps to prevent adulteration and to promote grading standardization.

(k) levy, recover and receive fees, subscriptions and other sums of money to which the Panchayat is entitled;

(l) Employ necessary number of officers and servants for efficient implementation of for above rules in Scheduled Areas.

(m) Conduct the auction of notified agricultural produce, live stock or products of live stock above rules in accordance with the rules.

(n) Ensure correct weighment of notified commodities;

(o) Regulate the entry of persons and the vehicular traffic into the market yard;

- (p) Prosecute persons violating the rules as per the rules of the concerned Department.
- (q) Institute or defend any suit, action, proceeding, application or arbitration and compromise such suit, action, proceeding, application or arbitration; and
- (r) Provide facilities, such as provision of adequate space for direct sales by a producer ;assistance by preparing invoices and bills on his behalf without employing a commission agent.
- (s) Implement the directions given by the Government from time to time in the establishment and development of markets.

Control over money lending to STs

- No Money Lending License shall be granted to Private Money Lending Agencies in Scheduled Areas.

Control over institutions and functionaries in all social sectors

(i) Education

- a) The Mandal Parishad shall be the authority to call for the administrative reports of all the Educational Institutions through the respective GPs.
- b) The Mandal Parishad shall approve the budget for all the Educational Institutions in its jurisdiction by 31st May, i.e., before commencement of the academic year.
- c) The Mandal Parishad shall monitor attendance and regularity of all the teachers working in all the Educational Institutions. The competent authority shall take against the erring staff on the report of MP and intimate the same to the MPP or GP as the case may be.

Management of Welfare Hostels

- a) The MPP shall monitor the matters pertaining to diet, repairs and over all day to day management of the welfare hostels.
- b) The MPP shall call for the administrative reports from all the hostel welfare officers in its jurisdiction twice in an academic year.
- c) The MPP shall be the recommendatory authority as for as admission of the students into the welfare hostels.
- d) The MPP shall recommend suitable action to disciplinary authority, against the hostel welfare officers and the staff if they are found to be absent or indulging in irregular practices to disciplinary authority concerned.
- e) The disciplinary authority concerned shall take action and intimate⁴ the same to Mandal Parishad or Gram Panchayat, as the case may be.

Health

- The PRI shall support and review the activities of hospitals or institution in their respective jurisdiction with Special focus on:
 - a) Review and monitor the National Health Programme under Rural Health mission and all other programmes.
 - b) Review the supply of medicines and its utilization.
 - c) Review and monitor the health extension activities in rural areas.
 - d) Review and monitor the steps taken to prevent outbreak of epidemics.
 - e) Review and monitor maintenance, up keep of surroundings and construction of Medical and Health Institutions.

- (f) Right from Village level to District level the Panchayat Raj Institutions will own the functioning of Primary Health Centers in their Jurisdiction:
Gram Panchayat at Village level; Mandal Praja Parishad at Mandal level and Zilla Parishad at District level.
- (g) Panchayat Raj Institutions will take ownership of activities such as safe water, Hygiene and sanitation of the villages.
- (h) Hospital authorities concerned will be responsible to send an Action taken report to the suggestions made by PRIs. ANMs-to Gram Pachayat; Primary Health Centre Doctors to-MPP and District Medical and health Officers to ZP meetings should attend.
- (i) PRIs concerned will respond an action taken report to the suggestions made for improvement of health by the concerned ANMs or , Doctors or DMHOs etc,
- (j) The Mandal Parishad shall approve the budget of all Primary Health Centers and sub centers in its jurisdiction.
- (k) The Mandal Parishad shall call for the administrative reports of all Primary Health Centers and sub centers within a month from the commencement of the financial year.

Women and Child Welfare

- a) The Gram Sabha shall approve the budget for Anganwadi centers.
- b) The Mandal Parishad shall call for the administrative reports from the Project Officer, ICDS in its jurisdiction within a month from the commencement of the financial year.
- c) The Gram Panchayat shall be the appointing and disciplinary authority for all the Anganwadi workers i.e. helpers and workers.

Control over local plans and resources including TSP

- a) The State Government shall communicate district wise TSP allocations to the District Collectors; District Collector will in turn the Mandal-wise allocations to the Mandal Parishad both in physical and financial terms within a month from the commencement of the financial year.
- b) The Mandal Development Officer shall communicate TSP allocations to the Gram Panchayats both in physical and financial terms within a month from the commencement of the financial year.
- c) The Mandal Parishad and Gram Panchayat shall review the progress of implementation of TSP across all the Departments in their jurisdiction once in a month.
- d) The Mandal Parishad and Gram Panchayat shall submit the administrative report on the implementation of TSP through the District Collector concerned.

Power of Review and Revision

- i. Commissioner is an appellate authority against the resolution of Gram sabha. Appeal should be filed within 60 days from the date resolution.
- ii. Government is a Revision Authority against the order of Commissioner. Aggrieved person may file a revision petition within 90 days from the date of order.
- iii. Government is the competent authority to issue suitable directions in the best interest of tribals.

THANKS