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# **IMPACT OF PESA RULES 2025 IMPLEMENTATION ON TRIBAL GOVERNANCE AND GRAM SABHA EMPOWERMENT IN JHARKHAND**

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## **ABSTRACT**

PESA or the Panchayats (Extension to Scheduled Areas) Act, 1996 was enacted to fulfill the constitutional vision of the democratic decentralisation and tribal self-governance by empowering the Gram Sabha as the main authority in the Scheduled Areas. PESA also aims at safeguarding the traditional laws, traditions and resource-management systems of the tribal population based on the Fifth Schedule of the Constitution, yet would extend the framework of Panchayati Raj Institutions in a way that is sensitive to their particular socio-cultural realities. Although it has a transformative potential, the introduction of PESA has been unevenly distributed among the States, with Jharkhand being one of the States that have been keeping the necessary mandated rules to functionalise its rules after more than 25 years.

The paper is a critical analysis of the Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, hereafter called “Jharkhand PESA Rules, 2025” which was finally notified almost twenty-five years after the enactment of the Act, and the High Court of Jharkhand continued to assert itself on the role of judicial intervention. The study by placing the Rules within the constitutional and legislative context of the PESA determines whether the recently enacted Rules are really promoting the goal of tribal self-governance or are a sham compliance strategy by the state government or by protecting themselves by the contempt proceedings of the High court. The paper through a doctrinal analysis of the statutory provisions, judicial rulings and administrative practices, draws a number of examples where the Rules undermine the powers of the Gram Sabha by making its rulings subject to Gram Panchayats and administrative authorities, prioritizing the State and Central laws to the customary practices, and providing ambiguity in dispute settlement and land ownership.

The paper suggests that even though the announcement of the Jharkhand PESA Rules, 2025 represents a major procedural breakthrough, the active circumvention of the PESA Act on a substantive level contradicts the

constitutional claim of participative and community-based governance. It claims that the PESA can meaningfully be implemented only with changes in the Rules to re-establish the primacy of the Gram Sabha, assure conformity to customary laws and to curb overreach by the administration. The paper identifies the pressing importance of harmonising the rules with the parent Act in real. The ability of the tribal independence, conserving of community resources, and the upholding of tribal self-rule in Scheduled Areas.

**Keywords:** PESA Rules, PESA Act, Jharkhand, Gram Sabha, Panchayat, Scheduled Areas.

## 1. INTRODUCTION

The Indian Constitution, a living governing document, envisages a vision of democratic decentralisation of powers which emerges from the idea that the governance should flow from the bottom to the upwards, i.e., from the grassroots level, as to ensure equal participation of all those people in the process of decision making, whose lives are getting affected due to such decisions, which is also known as right to self-governance. This idea has also been incorporated in Article 40 of the Directive Principles of State Policy, which lays duty on the state to organize village panchayats and confer such powers and authority on them in order for them to function as units of self-government. By relying on the recommendations of various committees such as the Balawantrai Mehta Committee (1957), the Ashok Mehta Committee (1977), the G.V. K. Rao committee (1985) and the L.M. Singhvi Committee (1986), which stressed the need for a three-tier Panchayat system, this vision was brought to life through the 73<sup>rd</sup> Constitutional Amendment Act 1992, which incorporated Part IX titled “The Panchayats” into the constitution which provided for the establishment of the Panchayat Raj Institutions (PRIs) as the units of self-government.<sup>1</sup> This amendment excluded the fifth and sixth schedule areas from their application under the Article 243M of the constitution, by recognising the distinct traditional, cultural or social practices among the tribal communities, however, the Parliament has been empowered with special powers to legislate any law which shall extend to the Scheduled Areas and tribal areas and Article 244(1) provides that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes except the north-eastern states.<sup>2</sup>

The Adivasi community, constitute approximately, 8.6% of the total population of India, with over 10.45 crore tribal citizens, as per the 2011 census. They are the group of indigenous people who are directly dependent on the nature for their livelihood and hence maintain a close relationship with the land, forests and the natural resources.<sup>3</sup> Prior to the British Colonisation, the regions inhabited by the adivasis were self-governing. After independence, the Constitution empowered the President, under Article 244(1) R/w Para 6 of the Fifth Schedule, to declare certain territories as Scheduled Areas. In exercise of this power, the President issued the

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<sup>1</sup> C. R. Bijoy, Policy Brief on Panchayat Raj (Extension to Scheduled Areas) Act of 1996, UNITED NATIONS DEVELOPMENT PROGRAMME 1, 6-7 (2012), <https://www.undp.org/india/publications/panchayat-raj-extension-scheduled-areas-act-1996-policy-brief>.

<sup>2</sup> Aparna Madhu, Pesa: A Mere Mirage of Independent Local Self-Governance, 2 NUJS JOURNAL OF REGULATORY STUDIES 82, 84 (2022).

<sup>3</sup> Id. at 83.

Scheduled Areas (Part 'A' and Part 'B' States) Order, 1950, which specified Scheduled Areas within the then existing states. The Scheduled Areas of present-day Jharkhand were part of Bihar until 2000. Subsequently, in 2007, The Scheduled Areas (State of Jharkhand) Order was passed, after the creation of the State of Jharkhand.<sup>4</sup> For the purpose of recommending the exceptions and modifications in Part IX of the Constitution in its application to the Scheduled Areas, a committee under Dilip Singh Bhuria was constituted by the Ministry of Rural Development which famously came to be known as the Bhuria Committee. It submitted its report in 1995, and highlighted that it is very necessary "to ensure that implementation of the policies and programmes drawn up in tribal interest are implemented in tribal interest". Its recommendations included a need for a special legislation where the Gram Sabha (village council) should be the primary authority to manage land, forest, water, land alienation and settling of the local disputes. It also emphasized the protection of their traditions and customary practices. These recommendations resulted in the enactment of the Panchayat (Extension to the Scheduled Areas) Act, 1996 (PESA), in which Part IX of the constitution relating to the Panchayats was extended to include the Scheduled Areas.<sup>5</sup>

The PESA Act, regarded as a '**Constitution within the Constitution**', acts as a relief from colonial laws of governance, thereby promoting the self-governance of the tribal people, by empowering the Gram Sabha over the preservation of community resources, land acquisition matters, management of minor forest produce, resolving disputes through traditional methods and safeguarding the customary practices. Despite this progress, its implementation has been inconsistent, which was even observed by various reports such as of the Ministry of Panchayati Raj and the Second Administrative Reforms Commission that there has been a transfer of PESA Act related powers from the States to the higher-level Panchayats instead of the Gram Sabha. The reports have also highlighted that there has been a failure on part of the States to amend laws to ensure compliance with PESA along with a delay in framing relevant rules.<sup>6</sup>

It was very essential that all the nine states should enact relevant rules to ensure tribal self-governance in those scheduled areas. Hence, except Jharkhand and Odisha, all the other seven states had enacted the PESA Rules earlier. Despite having a significant number of tribal

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<sup>4</sup> Bijoy, *supra* note 1, at 9-11.

<sup>5</sup> *Id.* at 13-15.

<sup>6</sup> *Id.* at 15, 24-25, 36-37.

populations, the State of Jharkhand has ranked low in compliance with the PESA Act.<sup>7</sup> However, recently, the Jharkhand Government has notified the Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, finally putting in place a long-delayed legal framework mandated for Scheduled Areas. This Research Paper aims to critically analyse the PESA Rules, 2025 introduced by the Jharkhand government, by relating them to the PESA Act, 1996, in order to understand its impact on tribal self-governance and the empowerment of the Gram Sabha within the Scheduled Areas.

### 3. LEGISLATIVE FRAMEWORK

#### 3.1 Background and Constitutional Context

The Panchayats (Extension to Scheduled Areas) Act was passed in 1996 in order to facilitate the extension of the provisions of Part IX of the Constitution relating to Panchayati Raj Institutions to the Scheduled Areas notified under the Fifth Schedule.<sup>8</sup> It ensures that those residing in scheduled areas have access to self-government through gram sabhas or the village assemblies. Under PESA act, Scheduled Areas are those referred to in Article 244(1)<sup>9</sup>, which specifies the fifth schedule<sup>10</sup> applies to Scheduled Areas and the Scheduled Tribes in states other than Assam, Meghalaya, Tripura and Mizoram. This act was as a legislative response to the historical marginalisation of tribal communities and the failure of traditional governance structures to keep in consideration their distinct social, cultural systems.<sup>11</sup> This act aims to recognize tribal communities freedom to self govern and their traditional rights over natural resources in scheduled areas.

Before PESA, the application of the 73rd Constitutional Amendment to Scheduled Areas was deferred, recognising that a uniform model of local self-governance could undermine tribal autonomy. Committees such as the Bhuria Committee (1995) was seen as a highlighting threshold needed for a governance framework that respected traditional institutions and gave real decision-making authority at the particular community level.<sup>12</sup> Thus, this act seeks to

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<sup>7</sup> Anju Helen Bara, A critical inquiry of the rule of PESA in Jharkhand, NATIONAL INSTITUTE OF RURAL DEVELOPMENT AND PANCHAYAT RAJ 1, 4 (2023) [https://nirdpr.org.in/nird\\_docs/srsc/srsc230217-1.pdf](https://nirdpr.org.in/nird_docs/srsc/srsc230217-1.pdf).

<sup>8</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, No. 40 of 1996, India Code (1996).

<sup>9</sup> INDIA CONST. art. 244(1).

<sup>10</sup> INDIA CONST. sched. V.

<sup>11</sup> See The Panchayats (Extension to Scheduled Areas) Act, 1996, pmbl.

<sup>12</sup> Ministry of Rural Development, Report of the Committee on Panchayati Raj Institutions in Scheduled Areas (1995) (Chairman: Dileep Singh Bhuria), Gov't of India.

operationalise the constitutional mandate under Article 243M(4)(b) by creating a sui generis framework of self-governance for tribal areas.<sup>13</sup>

The primary intention of the PESA Act is to strengthen self-governance for tribal areas by recognising the Gram Sabha as the foundational unit of democratic decision-making in Scheduled Areas.<sup>14</sup> This is different from the conventional Panchayati Raj system, where elected bodies often dominate governance. This act places the Gram Sabha at the apex so as to ensure customary and collective nature of tribal decision-making. The Act aims to preserve and protect the traditions, cultural identity and community resources of Scheduled Tribes, ensure participatory collective decision making through direct democracy, prevent alienation of tribal land and exploitation of natural resources and decentralise power in a manner consistent with tribal customary laws and practices.

### 3.2 Gram Sabha under PESA

Section 4 of the PESA Act, 1996 mandates that State legislations on Panchayats in Scheduled Areas shall be in resonance with customary laws, social and religious practices and traditional management practices of community resources. This section presents a clear departure from the hierarchical, state-centric governance model.<sup>15</sup> Under Section 4(d), the Gram Sabha is recognised as the competent authority for the purpose of safeguarding and preserving the traditions and customs of the tribal people, their cultural identity, community resources and the customary mode of dispute resolution.<sup>16</sup> This recognition accords legal sanctity to indigenous systems of governance and dispute settlement, which historically existed outside formal legal frameworks. And, Section 4(e) requires that every Gram Sabha shall approve plans, programmes and projects for social and economic development before their implementation.<sup>17</sup> This ensures that developmental interventions are not imposed top-down but are subject to community consent.

### 3.3 Powers of the Gram Sabha

The PESA Act gives exclusive powers to Gram Sabha which makes its roles primary in

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<sup>13</sup> INDIA CONST. art. 243M(4)(b).

<sup>14</sup> B.K. Mathew, *PESA and Tribal Self-Governance in India*, 42 Econ. & Pol. Wkly. 3855, 3856–57 (2007).

<sup>15</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4.

<sup>16</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(d).

<sup>17</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(e).

Scheduled Areas. Section 4(m)(ii) of PESA Act, 1996 grant the Gram Sabha with ownership of minor forest produce.<sup>18</sup> This provision is significant in the context of tribal livelihoods, as forest resources constitute a primary source of sustenance and economic security.<sup>19</sup> The recognition of ownership, rather than mere access or use, signifies legislative intent to empower communities economically. Under Section 4(m)(iii), the Gram Sabha or Panchayat at the appropriate level is empowered to prevent alienation of land in Scheduled Areas and to take appropriate action to restore unlawfully alienated land.<sup>20</sup> This provision addresses the historical dispossession of tribal land and seeks to place protective authority directly in the hands of the community. Section 4(i) mandates consultation with the Gram Sabha before land acquisition for development projects and before resettlement or rehabilitation of affected persons.<sup>21</sup> This provision operationalises the principle of prior consultation and, by implication, informed consent. The Gram Sabha is empowered to manage village markets, exercise control over money lending, and regulate intoxicants within the village.<sup>22</sup> These powers reflect an integrated vision of governance where economic, social and cultural aspects are collectively regulated by the community.

### 3.4 Gram Sabha and Panchayats

Section 4(n) provides that Panchayats shall not assume the powers and authority of the Gram Sabha.<sup>23</sup> This provision is crucial in preventing the dilution of community authority through bureaucratic or elected intermediaries. Thus, Panchayats under PESA function as implementing agencies rather than just autonomous decision-making bodies. The intent is to ensure that representative democracy does not override participatory democracy in Scheduled Areas.

### 3.5 Legislative Significance of PESA

The PESA Act represents a paradigm shift in Indian constitutional and administrative law.<sup>24</sup> It incorporates constitutional decentralisation and cultural pluralism and appreciates the fact that equality does not imply sameness. PESA is trying to compensate structural imbalances between

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<sup>18</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(m)(ii).

<sup>19</sup> *Samatha v. State of Andhra Pradesh*, (1997) 8 S.C.C. 191 (India).

<sup>20</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(m)(iii).

<sup>21</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(i).

<sup>22</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(m)(iv)–(vii).

<sup>23</sup> The Panchayats (Extension to Scheduled Areas) Act, 1996, § 4(n).

<sup>24</sup> See Upendra Baxi, *Human Rights, Development and the PESA Experience*, 36 Indian J.L. & Soc’y 21, 29–31 (2015).

the State and the tribal populations by foregrounding the Gram Sabha. The success of such a system of law is however dependent on good faith application under State legislations and regulations. Any subversion of the powers of the Gram Sabha by subordinate legislation would subvert the ethos of the Act itself, a fact which is especially important in the situation of State-specific PESA Rules. Overall, the PESA Act, 1996 offers a very strong legislative framework of tribal self-governance because it entrenches the substantive powers in the Gram Sabha on the basis of constitutional values, customary practices and participatory democracy. It is a framework based on which the validity and effect of State PESA Rules have to be evaluated.

### 3. A CRITICAL ANALYSIS OF THE PESA RULES, 2025

The PESA Act, 1996, enacted to recognise the distinct social, cultural, traditional governance systems of tribal communities, aims to empower the Gram Sabha as the primary authority in the Scheduled Areas, especially in matters relating to land, forests, minor minerals, customary laws and the resolution of the disputes. Section 4 of the PESA Act, clearly mentions that the Panchayats should not assume the powers of the Gram Sabha and that the customary laws, traditions and the community resource management of the tribal communities should prevail. The State of Jharkhand, since its creation in 2000, has a significant amount of tribal population and 13 Scheduled Area Districts. Yet, for nearly 25 years, the PESA Act was not implemented due to the absence of the state rules.<sup>25</sup>

Despite multiple advisories and recommendations by the Union Ministry of Panchayati Raj and the Expert Committee, and even the draft rules being prepared as early as 2019, still, the State Government failed to notify the PESA Rules.<sup>26</sup> Hence Judicial intervention was sought in the case of *Emil Walter Kandulna & Anr. v. State of Jharkhand*<sup>27</sup> (2021), where the petitioners highlighted the delay in implementing PESA Rules, as the result of which there was increased land alienation, mining activities, leases and the auctions of the sand ghat, all without the consent of the Gram Sabha. The Jharkhand High Court questioned the continuation of the governance in Scheduled Areas without empowering the Gram Sabhas, particularly when the natural resources were exploited for commercial purposes. Another landmark case which dealt

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<sup>25</sup> Concept Note on the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), Press Information Bureau, Government of India 1, 1-2, 8 (2021), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/nov/doc2021111811.pdf>.

<sup>26</sup> Bijoy, *supra* note 1, at 31-32.

<sup>27</sup> *Emil Walter Kandulna and Anr. v. The State of Jharkhand and Ors.*, W.P. (PIL) No. 49 of 2021.

with this aspect is the *Adivasi Buddhijivi Manch v. State of Jharkhand*<sup>28</sup> (2024), a PIL filed before the Jharkhand High Court brought the issue of delay in implementing the rules again before the Hon'ble Court. The High Court highlighted that prolonged delay in implementing the rules defeated the constitutional vision of decentralised governance, thereby making the PESA Act illusory and thus issued a writ of mandamus, directing the State Government to frame and notify the rules within two months from the date of receipt of this order. Even after such an order, when there was no compliance by the State Government, the same PIL was converted to contempt proceedings, seeking the court to pass relevant orders. Thus, the Jharkhand High Court issued a stay on the auction of sand ghats and the issuance of mining lease for minor minerals over such non-compliance of the earlier order. Due to which the Government finally implemented the Jharkhand PESA Rules, 2025, after which the contempt proceedings were disposed of by the Court.<sup>29</sup>

Before analysing the rules, it is important to understand the various powers and functions of the Gram Sabha as per the PESA Act. The main powers and functions are

- a) The protection of the very essence of the tribal communities, which makes them distinct, i.e., their traditions and culture;
- b) Resolving the community disputes through the customary laws of the tribal people;
- c) Prevention of land alienation;
- d) The protection of any other rights, the violation of which affects the traditions and customs of the Scheduled Tribes etc.<sup>30</sup>

The newly implemented rules apply to 13 of 24 districts in Jharkhand, including, Ranchi, Khunti, Lohardaga, Gumla, Simdega, Latehar, East and West Singhbhum, Saraikela, Dumka, Jamtara, Sahibganj and Pakur. Partial implementation has begun in Palamu, Godda and Garhwa. Though these rules recognise Gram Sabha as the supreme authority in matters relating to Scheduled Tribes, a critical analysis reveals, in compliance with the PESA Act, thereby

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<sup>28</sup> *Adivasi Buddhijivi Manch and Ors. v. State of Jharkhand and Ors., Cont. Case (Civil) No. 96 of 2025.*

<sup>29</sup> LATEST LAWS, <https://www.latestlaws.com/judgements/jharkhand-high-court/2026/january/2026-latest-caselaw-174-jhar/> (last visited Feb. 9, 2026).

<sup>30</sup> Madhu, *supra* note 2, at 87.

undermining its spirit.<sup>31</sup>

- a) Gram Sabha to Gram Panchayat-** As per Rule 15 (v)<sup>32</sup>, the Gram Panchayat will act as far as possible in accordance with the decision of the Gram Sabha. It clearly implies that whenever it is not possible, the Gram Panchayat need not act as per the decision of Gram Sabha, which clearly violates the powers conferred on Gram Sabha under Section 4 of the PESA Act, specifically, Section 4 (n)<sup>33</sup>, which highlights that the Panchayats do not assume the powers or authority of the Gram Sabha.
- b) Supremacy of State and Central Laws over Customary Law-** As per Rule 22(iii)<sup>34</sup>, the 5-year management plan laid down by the Gram Sabha should not be contrary to the relevant provisions of the state or central laws, thereby destroying the very essence of the PESA Act, which clearly mentions that the laws shall be made in consonance to the customary laws, social and religious practices and traditional management practices of community resources under section 4(a)<sup>35</sup> of the Act. However, it is interesting to note that just after this sub rule, there is Rule 22 (iv)(c)<sup>36</sup> which specifically highlights that community resources shall be managed and controlled as per traditions and customs of the community, imposing another condition that such traditions and customs shall not be contrary to the relevant provisions of state and central law, thereby again putting the state laws at a superior authority instead of traditions and customs of tribal people.
- c) Final Authority Retained by the State Government-** As per Rule 23(ii)<sup>37</sup>, if the Gram Sabha is of the opinion that any rule which has been issued by the State Government has been prohibited in any of the Scheduled areas, is against their customs, social and religious practices and traditions of the community, the Gram Sabha can make a decision during the meeting. However, the Rule specifically requires that the Gram Sabha shall forward such a proposal to the Deputy Commissioner who shall forward to State Government and ultimately the State Government shall inform the Gram Sabha of any decision being taken

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<sup>31</sup> Niraj Sinha, PESA Act implemented in Jharkhand after 25 years, but will it change tribal lives?, DOWN TO EARTH (Jan.12, 2026, 03:35 PM), <https://www.downtoearth.org.in/governance/pesa-act-implemented-in-jharkhand-after-25-years-but-will-it-change-tribal-lives>.

<sup>32</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 15(v).

<sup>33</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(n), No. 40, Acts of Parliament, 1996 (India).

<sup>34</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 22 (iii).

<sup>35</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(a), No. 40, Acts of Parliament, 1996 (India).

<sup>36</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 22 (iv)(c).

<sup>37</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 23(ii).

on such proposal, which clearly highlights that State Government is the final decision-making body on such matters, which again undermines the powers of Gram Sabha.

- d) Ambiguity in Dispute Resolution-** It is important to highlight that in rule 23(iii)(d) and 23(v)(j)<sup>38</sup>, it is clearly mentioned that disputes should be resolved in accordance with traditional customs and customary law. However, in 23(v)(b)<sup>39</sup>, it is mentioned that the Gram Sabha will resolve disputes as per the provisions of various acts. There is contradiction in both the provisions, which creates ambiguity and also contradicts Section 4(d)<sup>40</sup> of the PESA Act, which clearly mentions that Gram Sabha is the competent to safeguard and preserve the traditions and customs of the tribal people, their cultural identity, community resources and to resolve the disputes through their customary practices.
- e) Administrative Override of Gram Sabha Decisions-** In Rule 24(iii)(c)(II)<sup>41</sup>, it is mentioned that in case of the dissatisfaction of the department with respect to the decision of the Gram Sabha the department may refer the matter to the district deputy commissioner who will call the joint meeting of Gram Sabha and the representatives of the concerned department. It clearly shows that the Gram Sabha does not have absolute power with respect to decision making power conferred on it through Rule 24(i) and (ii)<sup>42</sup>, as the decision of the Gram Sabha is final and binding, as it can be referred to higher authority.
- f) Dilution of Ownership over Minor Forest Produce-** In rule 32(ii)(f)<sup>43</sup>, it is mentioned that the Gram Sabha shall, as per the requirement for removal of dry and dead wood bamboo and materials used for cultural purposes from the forest as for individual and community need such as pine, grazing, fuel, agricultural implements, shall make necessary arrangements for the same. However, the exercise of such rights shall be in accordance with applicable Central and state laws which clearly contradicts the Section 4 (m)(ii)<sup>44</sup> of the PESA Act, which specifically mentions that the Gram Sabha is endowed

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<sup>38</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 23(iii)(d) and 23(v)(j).

<sup>39</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 23(v)(b).

<sup>40</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, § 4(d), No. 40, Acts of Parliament, 1996 (India).

<sup>41</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 24(iii)(c)(II).

<sup>42</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 24(i) and (ii).

<sup>43</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 32(ii)(f).

<sup>44</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(m)(ii), No. 40, Acts of Parliament, 1996 (India).

or empowered with the ownership of minor forest produce.

**g) Land Rights and Administrative Control-** Rule 33<sup>45</sup> talks about eviction of land belonging to Scheduled Tribes against law. It is mentioned that with respect to land in the village, the Gram Sabha can undertake the various activities, as per the relevant sections of the Chota Nagpur Tenancy Act, 1908 through Sections 71A, 72 and 73<sup>46</sup> which specifically empower the Deputy Commissioner to exercise his powers in matters relating to return of lost land, thereby undermining the powers of Gram Sabha.

## FINDINGS

The Critical analysis of the Jharkhand PESA Rules 2025<sup>47</sup>, relating them to the Panchayats (Extension to Scheduled Areas) Act, 1996<sup>48</sup>, reveals that there are several deviations between them, which dilutes the constitutional vision of tribal self-governance. Though the Act recognizes that the primary authority is vested on the Gram Sabha in matters relating to the Scheduled Areas, there are several provisions of the rules that reduce the decision-making powers of the Gram Sabha, placing them subordinate to the Gram Panchayat, the District Administration and the State Government, thereby completely going out of the scope of Section 4<sup>49</sup> of the PESA Act and diluting its sanctity.

The use of words such as “as far as possible”, emphasises the discretionary provision, thereby weakening the binding nature of the decisions of the Gram Sabha. The imposing of conditions and subjecting the customary laws and the traditional practices to the State and Central laws, is in complete contrast of the provisions of the PESA Act, which specifically requires that that the laws shall be made in consonance or they should be in harmony with the customary laws, social and religious practices and traditional management practices of community resources, ultimately resulting in the neglecting of the statutory hierarchy established by the PESA Act. The rules prescribe certain procedures that require approval from the administrative authorities in decisions relating to the natural resources management, the dispute resolute and the rule making, which further hamper the powers given to the Gram Sabha by the PESA Act, thereby having a significant impact on its empowerment. There are certain inconsistencies within the

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<sup>45</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025, r. 33.

<sup>46</sup> Chota Nagpur Tenancy Act, 1908, §§ 71A–73, No. 6, Acts of Bengal Legislature, 1908 (India).

<sup>47</sup> Provisions of The Panchayat (Extension to Scheduled Areas) Jharkhand Rules, 2025

<sup>48</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, No. 40, Acts of Parliament, 1996 (India).

<sup>49</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4, No. 40, Acts of Parliament, 1996 (India).

rules itself, where on one hand they provide for dispute resolution through the customary practices and on the other subjecting such practices to the provisions of various other acts, thereby creating legal ambiguity. Thus, the rules impact both the tribal self-governance as well as the empowerment of the Gram Sabha, as the main aim was to harmonize the rules with the Act, instead of which the Gram Sabha powers have been restricted, reduced and relegated.

## 5. SUGGESTIONS

In order to bring the Panchayats (Extension to the Scheduled Areas) Jharkhand Rules, 2025, in consonance with the Panchayats (Extension to the Scheduled Areas) Act, 1996 and under the Fifth Schedule of the Indian Constitution, it is necessary to amend the provisions that dilute or tend to affect the primary authority conferred on the Gram Sabha, by the PESA Act. The discretionary provisions must be made mandatory, in order to ensure that the Gram Sabha decisions are actually final and binding on the Gram Panchayats and the administrative authorities, and not just for the sake of the rules. All the rules must resonate with Act and must place the customary practices and the traditional resource management systems as the supreme practices as per the Section 4(a)<sup>50</sup> and 4(d)<sup>51</sup> of the Act and not subordinate ones. The administrative authorities must only facilitate and advise the Gram Sabha, and any such rule that exceeds this role, must be removed, to ensure that the Final decision is of the Gram Sabha in the matters specified by the PESA Act. The dispute resolution must be done as specified by the PESA Act i.e., by relying on the customary and traditional practices, for the effective resolution of disputes. The parallel application of any conflicting laws must be prevented, to fully implement the provisions of the PESA Act. The delay of 25 years has already resulted in extreme hardship for the tribal community, their land, forests and the natural resources. Hence, there must not be any further delay in implementing proper rules which are in consonance with the PESA Act, to effectively recognise the right of self-governance of the tribal people.

## 6. CONCLUSION

The enactment of the Panchayat Provisions (Extension to Scheduled Areas) Jharkhand Rules, 2025 marks a long-awaited procedural milestone, but its substantive implementation reveals significant shortcomings. The results of this paper show that, although the Rules officially acknowledge the gram sabha as the ultimate authority, they undermine its powers by

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<sup>50</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(a), No. 40, Acts of Parliament, 1996 (India).

<sup>51</sup> Panchayats (Extension to the Scheduled Areas) Act, 1996, § 4(d), No. 40, Acts of Parliament, 1996 (India).

introducing discretionary provisions and administrative exceptions and overriding the State and Central law as compared to the customary practices. Weakness of ownership of small forest produce and the ambiguity in dispute resolution together with the survival of bureaucratic authority sabotage the spirit of the PESA Act, 1996, which was meant to empower the tribal self-rule. It is to be noted that by subordinating tribal traditions and community resource management to external legal frameworks, the Rules contradict the constitutional vision of participatory democracy and the primacy of the Gram Sabha. The delay of nearly 25 years has already inflicted hardship on tribal communities through land alienation, resource exploitation, and erosion of customary governance. A number of recommendations can be suggested in order to make the implementation meaningful which include recentralising the Gram Sabha by rendering its decisions final and binding and not at the will of Panchayat or administration, making amendments that disfavour customary laws and give priority to the State and Central laws and therefore will reinstate the constitutional requirement of Section 4 of PESA and restricting the power of administrators in such a way that they can only serve and not dictate.

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