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The PESA Paradox: Assessing the Gap Between Legislative Intent and Administrative Reality in Tribal Rajasthan

Mohit Choudhary
Assistant professor, SBP Govt. college, Dungarpur

ABSTRACT

The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was conceived as a corrective to the exclusion of tribal Fifth Schedule regions from the ordinary framework of Panchayati Raj, restoring to the Gram Sabha a degree of self-governing authority over land, minor forest produce, local disputes, and development planning that mainstream local government does not possess elsewhere in India. Three decades on, however, the distance between what the statute promises and what the district administration in practice delivers remains wide, nowhere more visibly than in the Scheduled Areas of southern Rajasthan — Banswara, Dungarpur, Pratapgarh, and the notified tehsils of Udaipur, Rajsamand, Chittorgarh, and Sirohi. This paper examines that distance through what it terms the PESA Paradox: a condition in which a law drafted to shift authority downward toward the Gram Sabha is administered through routines, rules, and incentive structures that continue to concentrate real decision-making in the district bureaucracy. Drawing on the Rajasthan Panchayati Raj (Amendment) Rules of 2011, the Fifth Schedule notification covering nine tehsils and forty-six gram panchayats of the state, Ministry of Panchayati Raj devolution indices, Tribal Sub-Plan expenditure data, and field-level accounts from mining, minor forest produce, and land-alienation disputes in the Dungarpur–Banswara belt, the study develops a framework linking statutory mandate, administrative discretion, and customary authority. It argues that the central obstacle to PESA's success in Rajasthan is not primarily a drafting deficiency in the state rules but the survival, inside line departments and the revenue bureaucracy, of a pre-PESA administrative culture that treats Gram Sabha consent as a procedural formality

rather than a binding precondition. The paper closes with recommendations oriented toward rule harmonisation, capacity-building within Gram Sabhas, and enforceable consequences for non-compliance, rather than further legislative restatement of rights the state already recognises on paper.

Keywords: PESA, Panchayati Raj, Fifth Schedule, Tribal Self-Governance, Gram Sabha, Rajasthan, Minor Forest Produce, Land Alienation, Administrative Accountability.

Introduction

In a village panchayat in the Aspur block of Dungarpur district, a Gram Sabha resolution objecting to a proposed stone-crushing lease was passed, minuted, and forwarded to the Sub-Divisional Officer in 2023. The lease was granted anyway, some months later, on the file's own record of "no objection received in time." Episodes of this kind are not rare in the Scheduled Areas of southern Rajasthan; they are close to routine. They illustrate, in miniature, the question this paper sets out to examine: why a law that vests the Gram Sabha with what Parliament intended to be a decisive voice over land, minerals, and local resources so often produces, in practice, only a consultative footnote to decisions already made elsewhere.

The Panchayats (Extension to Scheduled Areas) Act, 1996 was passed to extend Part IX of the Constitution to Fifth Schedule Areas with modifications suited to tribal custom, following the recommendations of the Bhuria Committee. Rajasthan notified its own PESA Rules in 2011 under the Rajasthan Panchayati Raj Act, 1994, bringing nine complete tehsils, one complete block, and forty-six gram panchayats across Banswara, Dungarpur, Pratapgarh, and parts of Udaipur, Rajsamand, Chittorgarh, and Sirohi within the Scheduled Area. On paper, this is among the more complete state-level transpositions of the central Act. The persistence of a wide implementation gap in precisely this state is therefore instructive: it suggests that the paradox this paper investigates is not chiefly a problem of legislative drafting but of administrative behaviour. This paper treats PESA's difficulties in tribal Rajasthan as one instance of a more general pattern in Indian administration, in which devolutionary statutes are absorbed into bureaucratic routines that were built for an earlier, more centralised model of governance and that resist the redistribution of authority the new law requires. Three domains recur across the literature and the field record alike: control over minor forest produce and its revenue, oversight of land alienation and mining leases, and the Gram Sabha's role in the Tribal Sub-Plan and development planning process. The paper examines each in turn before proposing a framework — the Devolution–Discretion Gap — for understanding why formal compliance with PESA so often coexists with substantive non-implementation.

The remainder of the paper proceeds as follows. It first reviews the literature on PESA's design and its record of implementation across Fifth Schedule states. It then sets out the institutional and historical context specific to Rajasthan, from the Bhuria Committee to the 2011 state rules and the Tribal Area Development administration. A section of ground-level observations follows, drawn from the Dungarpur–Banswara belt. The paper then develops its analytical framework, identifies the principal challenges to reform, and closes with policy recommendations and a conclusion.

Literature Review

The Bhuria Committee (1995), whose recommendations underlie the 1996 Act, framed the extension of Panchayati Raj to Scheduled Areas as an act of restoration rather than innovation: it argued that tribal communities in the Fifth Schedule regions had long-standing systems of self-governance through Gram Sabhas and traditional councils, and that mainstream Panchayati Raj law, applied without modification, would displace rather than strengthen these institutions. This framing gave PESA its distinctive character as a law that subordinates ordinary Panchayati Raj provisions to Gram Sabha consent on a defined set of subjects, rather than one that merely extends the standard three-tier structure.

Ajay Dandekar and Chitrangada Choudhury, in widely cited field-based accounts of PESA's operation in central India, describe a recurring pattern in which state rules narrow or qualify the "consultation" the central Act requires into a form the district bureaucracy can satisfy with a single meeting and a signed register, regardless of the substance of the Gram Sabha's response. Ashok Pankaj and other researchers associated with the Council for Social Development have similarly documented, across several Fifth Schedule states, a persistent gap between the devolution indices state governments report to the Ministry of Panchayati Raj and the functional autonomy Gram Sabhas describe when interviewed directly.

The Xaxa Committee Report (2014), commissioned by the Ministry of Tribal Affairs to assess the socio-economic status of Scheduled Tribes, devoted a substantial section to PESA's non-implementation, concluding that the principal obstacle was not the absence of state rules — by 2014 most Fifth Schedule states, Rajasthan among them, had notified rules — but the failure of line departments (forest, mining, revenue) to amend their own operating procedures to give the Gram Sabha's role real effect. This finding recurs in the Ministry of Panchayati Raj's own periodic reviews, which note that subordinate legislation and departmental circulars in several states continue to authorise mining leases, land transfers, and forest produce contracts through channels that bypass or merely notify the Gram Sabha after the fact.

Work specific to Rajasthan is comparatively thin but converges on similar conclusions. Studies commissioned through **the state's Tribal Research Institute in Udaipur** have documented that while the 2011 PESA Rules formally align with the central Act on minor forest produce ownership and dispute resolution, the corresponding forest and mining department rules were amended more slowly and incompletely, producing a period — and in some respects a continuing condition — in which two sets of departmental instructions point in different directions on the same transaction. This body of work forms the immediate backdrop against which the present paper situates its account of the Devolution–Discretion Gap.

Institutional and Historical Context

From the Bhuria Committee to the 1996 Act

The exclusion of Fifth Schedule Areas from the 73rd Amendment of 1992 was deliberate: the Constitution had long treated these regions as requiring a distinct administrative logic, one in which the Governor retains powers under paragraph 5 of the Fifth Schedule to apply or disapply central and state laws. The Bhuria Committee's 1995 report recommended that this distinct logic be given a positive, self-governing content rather than remain purely protective, and Parliament enacted PESA in 1996 on that basis, extending Part IX with the modification that Gram Sabhas in Scheduled Areas be "competent to safeguard and preserve the traditions and customs of the people," their community resources, and their traditional mode of dispute resolution.

Rajasthan's Scheduled Area and the 2011 State Rules

Rajasthan's notified Fifth Schedule Area covers nine complete tehsils, one complete block, and forty-six complete gram panchayats spanning 227 villages, concentrated in Banswara, Dungarpur, and Pratapgarh, with partial coverage in Udaipur, Rajsamand, Chittorgarh, and Sirohi. The state notified its PESA Rules in 2011 as amendments to the Rajasthan Panchayati Raj Act, 1994, formally vesting the net revenue from minor forest produce — including tendu leaves, honey, wax, and medicinal herbs — in the Gram Sabha, with half of tendu-leaf proceeds earmarked for local infrastructure and half for cultivation operations linked to the state's rural employment guarantee scheme. The rules also require Panchayati Raj representation on the state Forest Department's advisory bodies governing minor forest produce.

This is, on its face, a reasonably complete transposition of the central Act's economic provisions. Its significance for the argument of this paper lies precisely in that completeness: because Rajasthan's rules are not conspicuously deficient by comparison with other Fifth Schedule states, the persistence of an implementation gap in the state cannot be attributed chiefly to a drafting failure, and the paper's analysis turns instead to the administrative machinery through which these rules are executed.

The Tribal Area Development Administration

Rajasthan's Tribal Area Development (TAD) Department, headquartered at Udaipur, sits alongside — rather than above — the ordinary revenue, forest, mining, and Panchayati Raj departments in the Scheduled Area districts, and it possesses limited authority to compel those line departments to route their decisions through the Gram Sabha consultation PESA requires. This bifurcated structure, in which the department charged with tribal welfare lacks command authority over the departments that actually administer land, minerals, and forests, recurs across the Fifth Schedule states and is central to the account developed later in this paper.

The Forest Rights Act and Overlapping Mandates

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was enacted a decade after PESA and covers substantially overlapping ground — community forest resource rights, minor forest produce, and Gram Sabha authority over forest land use. In the Dungarpur–Banswara belt, forest and revenue officials frequently report that overlapping and sometimes inconsistent procedural requirements under the two statutes create genuine administrative ambiguity, which in practice is resolved by defaulting to whichever procedure requires the least alteration of pre-existing departmental routine — typically not the Gram Sabha-centred procedure that either Act intends.

Observations: Ground-Level Realities

Minor Forest Produce and the Tendu Leaf Economy

The 2011 Rules vest net tendu-leaf revenue in the Gram Sabha, yet Forest Department contractors in several Dungarpur ranges continue to negotiate collection rates directly with headmen or self-styled village representatives rather than through a Gram Sabha resolution, and the resulting payments are frequently disbursed as a lump sum to a small number of individuals rather than credited to the panchayat's own account for the infrastructure and cultivation spending the rules prescribe. Collectors in the belt report standard bag rates persistently below those paid in neighbouring Madhya Pradesh, a gap the Rules themselves implicitly acknowledge is a live grievance.

Land Alienation and Mining Consent

PESA requires Gram Sabha consultation before land acquisition for development projects and before granting mining leases for minor minerals, and it charges the Gram Sabha with a role in preventing and restoring alienated tribal land. Field accounts from the marble- and soapstone-quarrying belts of Udaipur and Banswara districts describe a consultation process compressed into a single notified meeting, often held with short notice and in the administrative language of the district rather than the local dialect, after which the absence of a recorded objection is treated by the licensing authority as consent. Restoration of already-alienated land, meanwhile, depends on a revenue court process that villagers describe as slow, costly, and largely inaccessible without outside legal assistance.

"Gram Sabha mein baat toh ho jaati hai, lekin faisla pehle hi ho chuka hota hai — hum sirf haan bharne ke liye bulaye jaate hain." (The Gram Sabha does have its meeting, but the decision is already made beforehand — we're only called in to say yes.) — ward panch, tribal gram panchayat, Aspur block, Dungarpur district, 2024 field observation

The Gram Sabha in Development Planning

Under the Tribal Sub-Plan mechanism, Scheduled Area gram panchayats are formally entitled to identify and prioritise local development schemes before they are consolidated at the block and district level. In practice, panchayat secretaries in several Banswara-district panchayats report that scheme lists arrive from the block office largely pre-decided, with the Gram Sabha's role limited to ratifying an agenda it did not set — a pattern that mirrors, at the level of ordinary development administration, the same compression of consultation into ratification observed in the mining and forestry domains.

Analysis: The Devolution–Discretion Gap

A Conceptual Framework

The Devolution–Discretion Gap describes the space that opens between a statutory mandate that formally relocates decision authority to the Gram Sabha and an administrative apparatus that retains, through subordinate rules, departmental circulars, and everyday procedural choices, the practical discretion to determine when, how, and whether that authority is exercised. The gap is not static: it is produced continuously, transaction by transaction, whenever a forest range officer, a mining inspector, or a block development officer chooses a procedural shortcut that a line-department circular still permits even though the parent Act no longer does.

Consultation as Ritual, Not Constraint

Across the minor forest produce, land, and planning domains examined above, the same structural pattern recurs: a Gram Sabha meeting is convened, a resolution is recorded, and the substantive decision proceeds largely independent of that resolution's content. This is not best explained as isolated misconduct by individual officials. It reflects the survival, inside departmental standard operating procedure, of a pre-PESA administrative culture in which "consultation" with village-level bodies was historically advisory rather than binding, and in which the burden of enforcing PESA's stronger, consent-based standard has been left to villagers themselves rather than built into departmental compliance mechanisms.

The Bifurcated-Authority Trade-off

Strengthening the Tribal Area Development Department's authority over line departments in Scheduled Areas would address one half of the gap, but risks recreating, in a tribal-specific bureaucracy, the same top-down discretion PESA was designed to displace, unless that strengthened authority is itself made answerable to Gram Sabhas through transparent, appealable procedures. The trade-off, in other words, is not between centralised and decentralised administration in the abstract, but between two different sites of discretion — ordinary line departments or a tribal-affairs department — neither of which is self-correcting without an external, Gram Sabha-facing accountability mechanism.

Key Issues and Challenges

Departmental Rules Lag the Parent Act: Forest, mining, and revenue department manuals and circulars in Rajasthan have been amended unevenly since 2011, so that officials executing routine transactions can often find a departmental instruction that does not require the Gram Sabha consent the state PESA Rules themselves mandate.

Weak and Uneven Capacity Within Gram Sabhas: Many Gram Sabhas in the Scheduled Area lack independent access to the maps, lease documents, and technical information needed to evaluate a mining or land-use proposal on its merits, leaving them structurally dependent on the same officials whose proposals they are meant to scrutinise.

No Meaningful Consequence for Non-Compliance: Neither the central Act nor the state Rules attach a clear, enforceable penalty to a district or line-department decision taken without valid Gram Sabha consent, so that the principal remedy available to an aggrieved village is a slow-moving writ petition rather than an administrative or criminal sanction.

Overlap With the Forest Rights Act: Where PESA and the Forest Rights Act prescribe different procedural sequences for the same forest-land decision, officials in the

Dungarpur–Banswara belt tend to resolve the ambiguity in favour of whichever procedure is administratively lighter, which is rarely the one that gives the Gram Sabha the fullest role.

Language and Access Barriers in Consultation: Notices and meeting proceedings conducted in Hindi administrative register, on short notice, and without translation into local Wagdi or Bhili dialects reduce the practical quality of consent even where a Gram Sabha meeting is formally held.

Policy Recommendations

1: Undertake a systematic audit and harmonisation of all forest, mining, and revenue department circulars and standard operating procedures in Rajasthan's Scheduled Area districts against the 2011 PESA Rules, repealing or amending any subordinate instruction that permits a transaction to proceed without valid, minuted Gram Sabha consent.

2: Attach a clear, enforceable consequence — administrative, and where appropriate disciplinary — to any mining lease, land transfer, or forest-produce contract executed in the Scheduled Area without documented Gram Sabha consent obtained in the local language and with adequate advance notice.

3: Strengthen the Tribal Area Development Department's technical support role by giving Gram Sabhas independent, pre-meeting access to lease maps, environmental clearances, and revenue records for any proposal on which their consent is required.

4: Harmonise procedures under PESA and the Forest Rights Act through a single joint protocol for forest-land decisions in the Scheduled Area, so that officials are not able to select whichever statute's process is administratively lighter.

5: Build a standing grievance and audit mechanism — housed outside the line departments whose decisions it reviews — through which Gram Sabhas can challenge a consultation they consider procedurally deficient, without recourse to civil litigation as the first remedy.

6: Revise Tribal Sub-Plan scheme-formulation timelines so that Gram Sabhas receive draft proposals early enough to genuinely prioritise and amend them, rather than ratify a list finalised at the block level.

7: Commission periodic, independent field verification of Gram Sabha functioning in the Scheduled Area districts, distinct from the devolution indices departments self-report to the state and central government.

Conclusion

Rajasthan's experience with PESA suggests that the central obstacle to the Act's success in tribal districts is not primarily the absence of a compliant legal text — the state's 2011 Rules are, on the whole, a reasonably faithful transposition of the central Act's mandate. The obstacle is that the ordinary machinery of forest, mining, revenue, and development administration has continued to operate on discretionary assumptions that predate PESA, so that Gram Sabha consultation is regularly satisfied procedurally without being honoured substantively. This is what the paper has termed the Devolution–Discretion Gap, and it is a governance problem rather than a drafting one.

Closing that gap will require less legislative restatement of rights the state already recognises on paper, and more sustained attention to the departmental rules, incentive structures, and accountability mechanisms through which those rights are — or are not — exercised in practice. Whether the PESA Paradox persists in tribal Rajasthan over the coming decade will depend less on any future amendment to the Act itself than on whether the district administration can be made to treat a Gram Sabha resolution as a binding constraint on its own action, rather than a formality to be recorded and then set aside.

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