

Akhil Bharatiya Vanvasi Kalyan Ashram

Resolution passed in Kendriya Karyakari Mandal Meeting
30thth September 2015-Nagpur.

Resolution No. 8. Make the Panchayat-PESA Act, 1996 Functional and Effective.

The Panchayats (Extension to Scheduled Areas) PESA Act, 1996 was enacted four years after the 73rd Constitution Amendment Act was adopted and Article 243 (M) was inserted in it in the year 1992 which is applicable in 10 states of the Scheduled Areas (SAs). These states are Rajasthan, Gujarat, MH, MP, CG, Andhra Pradesh, Telangana, Odisha, Jharkhand and HP.

Panchayats of these 10 SAs states under this Act were provided many special powers; making them institute of local self government to enable function on many issues of governance-administration. These Panchayats have been structured of 4 tiers while the Panchayats outside the SAs are of three tiers, namely (1) Village Panchayat, (2) Block or Taluka Panchayat and (3) District Panchayat. The fourth tier of Panchayats in SA is Gram-Sabha; which is the most powerful and autonomous. The Act itself has a speaking provision to the effect that the functions and powers vested into the lower Panchayat couldn't be delegated to the higher one.

Chairperson of the Panchayats at all levels would be only from the Janjati community as per this Act. Gram Sabha (GS) will have ownership right over the Minor Forest Produces (MFPs/NTFPs), will be consulted before land acquisition and rehabilitation of displaced persons; and 29 subjects like prohibition of any intoxicants, protection against alienation of Janjati land and restoration of illegally alienated land, manage minor water bodies and control over the money lending by non-Janjatis, control over all social institutions and its functionaries like schools, hospital and Anganwadis etc; control over local plans, selection of beneficiaries, issue of utilization certificates of expenses incurred over schemes, concessions and licenses of minor minerals, customary mode of their dispute resolutions, protection of their customs, traditions and cultural identity have been entrusted to the GSs. The greatest recognition of these powers of GS was given by the Apex Court in the famous Vedanta Niyamgiri (Odisha) case of 2013.

Sec 5 of the PESA Act made it obligatory for all these states to make necessary provisions in all the acts, rules and regulations within a period of one year of giving assent by the President to this Act. But none of them except Maharashtra and MP did so, though they adopted it *de jure* due to this compulsion by 1997, but *de facto*, this implementation work is still going on, even after two decades.

If this Act is allowed to take place in its true spirit, many of the issues of Janjatis could be addressed locally, the unrest could be minimized, and corruption controlled, development activities speedup and benefits of welfare schemes would reach to those the schemes are meant for. The Second Scheduled Area and Scheduled Tribes Commission has also written a lot about it; but no action taken so far.

Considering all these things seriously, Kendriya Karyakari Mandal (KKM) of ABVKA demands all the concerning state governments that:

1. All the Rules-Acts related to 29 subjects given to Panchayats under this Act should be adequately amended at the earliest in their states to make the PESA functional and effective,

2. Functions and powers meant for the Gram Sabha; which have been entrusted to the higher Panchayats by many states, should be restored in favour of the lowest Panchayats, the Gram Sabha or the Village Panchayat as the case may be,
3. Maharashtra has notified separate **Scheduled Area Village vide its GO dated 19th May 2015** to enable small Hamlets, Tola, Pada or colonies to give them status of separate Gram Sabha under the PESA Act. **Similar notifications should be issued by all other remaining 9 states of this effect.** In absence of such notifications, the Village Panchayats have replaced Gram Sabhas and functioning as such; resulting into non existence/development of separate Gram Sabhas to the small Hemlates/Tolas/Padas/Colonies in these 9 states as provided in the PESA Act. This will not only assure affective implementation of the PESA Act but will also be helpful in implementing the Forest Rights Act effectively,
4. Similarly, all the SA states should constitute **District level Convergence Committees** for protection and management of CFR to assure affective implementation of the PESA and the FRA jointly in their states; **as the Maharashtra has Notification vide its GO dated 12th June 2015.**
5. **All the ten Hon Governors of the SA States are re also requested** to initiate necessary actions in their governments in order to make the PESA functional and effective as the Hon President has urged them in the Governors' Conference held in February this year. The Constitution has given them special powers and duty of protecting the Janjatis; which should be entertained by them independently – discretionarily,
6. **KKM demands Ministry of Tribal Affairs/Union Government** to put in place a permanent system of call a **separate joint annual conference of CMs, Tribal Welfare Ministers and Hon Governors of SA States** to assure effective and time-bound implementation of PESA and other provisions of Fifth Schedule in these states.

Vanvasi Kalyan Ashram Calls upon all its workers and urges all the social, political leaders of Janjatis and Voluntary-nongovernmental Organisations working among them; to aware, organize and educate the Janjatis and at all others at appropriate levels by time-bound programs for making this importan work a great success.

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