



## PESA ACT AND INTOLERANCE IN CONNECTION WITH SCHEDULED AREAS IN KERALA

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### **Abstract**

*The PESA Act will be seen as a legislative revolution as it empowered gram sabhas to take decision on important and contested tribal matters such as enforcing a ban on the sale and consumption of intoxicants, ownership of minor forest produce, power to prevent alienation of land and to restore unlawfully alienated land, management of village markets, control over money-lending, an land acquisition. The existing politico-administrative structure fails to defend the law by failing to execute it. The law itself was amended and subsequently replaced in a manner contrary to constitutional obligations, despite public opposition. The government has violated high court orders and consistently disregarded judicial pronouncements.*

**Key Words:** *Intolerance, Scheduled Area, PESA Act, Judicial Pronouncement.*

### **Introduction**

The Fifth Scheduled guarantees tribal autonomy and tribal rights over land. With the increased criticism on centralism in governance the Government of India in 1992 passed the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendment Acts. It empowered panchayats and municipalities with a vision of local self-governance. However, the Fifth Scheduled Areas did not fall in its domain legally because of the constitutional immunity against overarching laws. While village-level democracy became a real prospect in other areas the Fifth scheduled areas remained bereft of that privilege (Mahaprashasta, Ajoy Ashirwad, 2013). It was this reason that PESA Act was enacted under V schedule. It extended rule to the tribal areas. The fundamental spirit of PESA is that it does not delegate powers but devolves them to the village level gram sabhas, paving the way for participatory democracy. PESA Act exercise command over natural resources, resolve disputes and manage institutions such as schools and cooperatives under it. The PESA Act will be seen as a legislative revolution as it empowered gram sabhas to take decision on important and contested tribal matters such as enforcing a ban on the sale and consumption of intoxicants, ownership of minor forest produce, power to prevent alienation of land and to restore unlawfully alienated land, management of village markets, control over money-lending, an land acquisition (Lonava, 2016). Along with this, it made it mandatory for all legislation in the scheduled areas to be in conformity with the customary law, social and religious practices and traditional management practices of the community. PESA mandates tribal affairs and tribal autonomy (Mahaprashasta, Ajoy Ashirwad, 2013).

With respect to the declaration of tribal habitations as ‘Scheduled Area’ under Schedule V of Article 244 of the Constitution no adivasi habitation in Kerala has been declared scheduled area till date thus denying the enjoyment of this most vital specific part of the Constitution by the adivasis of Kerala. The Kerala is excluded from scheduled Areas though which have significant tribal belt (Bijoy, C R & K Ravi Raman, 2003). The tribals of Kerala have been fighting. The story of tribal fight for implementing the Scheduled Areas under the Vth Schedule and PESA Act in Kerala is started from Muthanga to Stand Up Protest (Nilpu Samaram) in 2014.

### **Behind the Muthanga Struggle**

It was during 2001, an intense struggle was launched by C. K. Janu and Geethanandan led Adivasi Dalit Samara Samiti with the setting up of refugee camps before the residence of the Chief Minister and the Secretariat at Thiruvananthapuram, the state capital and successfully negotiated with the then government to the historic meeting in connection with Schedule V and PESA Act 1996. This incident also contributed to the spawned of Adivasi Gothra Maha Sabha (AGMS), an organization without affiliated to any political parties. The major points listed in the negotiation were:

Part IV of the Directive Principles of State Policy under Article 40 titled ‘Organization of Village Panchayats’ reads thus : “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Part IV of the Directive Principles of State Policy under Article 40 titled ‘Organization of Village Panchayats’ reads thus : “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

In fact, it is on this very obnoxious ‘self-government’ clause that the 73rd and 74th Amendment on Panchayat Raj and Nagarpalika Acts as well as the Panchayat Raj (Extension to the Scheduled Areas) Act 1996 for Schedule V areas are built. However, the state government and the mainstream society are not ready to implement it. If the adivasi insistence on this



constitutional provision on 'self-government' is unacceptable to the government and political parties, the democratic right of advises to organize and protest is questioned. Then these actions are considered as smack of a vicious and dangerous discriminatory approach and practice. The government was not accepted, as they were agreed with the tribal people in 2001, to include advise areas in Kerala in the Schedule V and would not be sent to the centre for further notification. This was to unable the advises to enjoy the provisions of the Panchayat Raj (Extension to the Scheduled Areas) Act 1996 that provides for elements of self-governance.

Article 244 Clause (1) Schedule V makes it mandatory for the state to ensure (Para 5(2) of Schedule V) total prohibition of transfer of immovable property to any person other than to a tribe, for peace and proven good management of a tribal area and to protect possession, right, title and interests of the STs. The provisions under Schedule V of this clause are not only applicable to the administration and control of areas notified by the president of India as 'scheduled areas' but also to those notified as 'scheduled tribes in any state'. This is to be achieved by suitable legislations as well as by declaration of tribal majority areas as 'scheduled area' with provisions for certain degree of self-governance since the enactment of the Panchayat Raj (Extension to the Scheduled Areas) Act 1996. Though no tribal area in Kerala has been thus far been notified as a scheduled area, yet as all the STs of all the states come under the purview of this article.

However, the government did not implemented the provisions in the agreement even after one year, and this led to the tragic events at Muthanga in Kerala wherein a culmination of advise frustrations over the failure of successive governments in the state to bring the tribal regions as Scheduled Areas under Schedule V of the constitution, implementation of PESA Act and restore advise land. The protest of the advises at Muthanga met with brutal repression by the government. The successive governments with the support of mainstream society are very cruelly suppressed democratic and constitutional demands of the tribal people in Kerala. If the governments bring all adivasi regions under Schedule V of Article 244 which provides for participatory self-rule and autonomy, it would herald a new era in tribal history.

### **Stand Up Protest and its Aftermath**

The indefinite stand up protest of Adivasi Gothra Maha Sabha, an umbrella body of tribal organizations in Kerala, has conducted a 162 days long protest in 2014. The demand of the protestors is the areas with 100 per cent tribals will be allowed to have separate panchayats under PESA Act - Panchayats (Extension to Scheduled Areas) Act 1996.

Indeed, the protest was lasting around for more than five months; a group of fifty tribal people have been standing outside a government office in the southern Indian state of Kerala to press their claim for land and amenities. At the root of the demonstration is a long and arduous battle that C K Janu and her fellow travelers have fought for their fundamental rights. They are demanding that the government deliver on its promise of giving land, water and electricity to the community.

The tribal people stand uninterruptedly for nearly eleven hours every day outside the office even as ministers and officials pass them by. The protesters mainly live in the three districts of Wayanad, Idukki and Palakkad and, reports say, in recent years, a number of infants have died due to malnutrition and local women have been sexually abused in the tribal settlements by outsiders. Writers, filmmakers and some political leaders drop in to pledge support. Some donate money; others sing revolutionary songs. "Many more are willing to come but we are restricting the number to avoid inconvenience to the people," protest leader CK Janu mentions (Ashraf). The Tribals from Wayanad, Palakkad, Idukki and other districts have been standing in front of the Kerala state secretariat from morning till evening every day. The protestors demand the state government has to implement the package it had promised to Adivasis (tribals) in 2001.

As many complements and support the protest has scored, the activist Medha Patkar, the protest has entered into its 158 day, was offer support to the lengthy standing up protest. She said "they are 'Adivasis', the original inhabitants and everyone else has come to encroach upon their land" (The New Indian Express, Medha Supports Nilpu Samaram). The adivasis have decided to intensify the protest. "The agitation is not only for land but also for justice which has been denied all through these years," says Geethananda, convener of the protest (Suchitra).

Finally, with the implementation of PESA - Panchayat (Extension to Scheduled Areas) Act 1996 in force, the state will have tribal panchayats. "In the first phase, panchayats where there is 100% tribal population, will be declared tribal panchayats. Though the Act says panchayats having more than 40% of tribal population can be declared as tribal panchayats, we have decided to implement the act in those panchayats having 100% tribal population in the first phase". It was said the Scheduled Caste Development Minister A. P. Anilkumar after discussions with AGMS leaders CK Janu and M Geethanandan (Times of India, Nilpu Samaram called off after 162 Days). Moreover, the government decided to demarcate adivasi areas in the state under Schedule V of Article 244 of the Indian Constitution.



Since the Adivasi-Dalit organisations, different social, cultural and other political organisations are extremely vigilant the state government hasn't yet unleashed its terror on Adivasis. The social media also plays a commendable role in making this struggle visible in the Malayali public sphere. It is a shame that the landless Adivasis have been standing for more than three months and the political parties and government are not taking any steps to resolve the issue amicably. It is our responsibility to support this struggle which is a struggle to protect land, forest, water and all natural resources. This is a struggle for justice, struggle to exist, and struggle to survive. The people around the world are expressing their solidarity with the struggle in many ways; some even staging a one-day symbolic standing protest. (Paint Your Support: In Solidarity With Nilpu Samaram, 2014) The existing politico-administrative structure fails to defend the law by failing to execute it. The law itself was amended and subsequently replaced in a manner contrary to constitutional obligations, despite public opposition. The government has violated high court orders and consistently disregarded judicial pronouncements. Judicial responses to all of this have been grossly inadequate, and parliamentary democracy and the political system have failed to uphold the constitutional rights of adivasis. In these circumstances, the advises recognized that the present political-administrative arrangement would not deliver justice and demanded a system that would transfer to themselves certain powers and responsibilities of enforcing the law. It is in this context that the actions of the Adivasi Gothra Mahasabha and other groups to evolve participatory self-governance and methods of resolving long-standing inequities have arisen.

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