

**GOVERNMENT OF INDIA
PANCHAYATI RAJ
LOK SABHA**

UNSTARRED QUESTION NO:3776
ANSWERED ON:23.12.2004
IMPLEMENTATION OF PESA ACT
Barman Shri Ranen

Will the Minister of PANCHAYATI RAJ be pleased to state:

- (a) whether the Government is monitoring the implementation of the Provisions for the Panchayats (Extension to the Scheduled Areas) Act, 1996;
- (b) if so, the details thereof and the details about various provisions of PESA Act, 1996 implemented in West Bengal;
- (c) whether the implementation of PESA Act, 1996 has been diluted at the cost of tribals as stated in the agenda for Chief Ministers Conference; and
- (d) the steps taken/to be taken to ensure that the Act is implemented to fulfil the desired objectives?

Answer

MINISTER OF PANCHAYATI RAJ (SHRI MANX SHANKAR AIYAR)

(a) Yes Sir.

(b) The Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 was passed by the Parliament in 1996 and the provisions of the 73rd Amendment with some modifications have been extended to the tribal areas under Schedule V in the States of Andhra Pradesh, Chattisgarh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Rajasthan. It is not extended to West Bengal.

(c) & (d) All States where PESA, 1996 is applicable have enacted legislation as provided for in the Central Act. Notwithstanding the legislation, it appears that implementation has been diluted at the cost of tribals. Critical issues such as access to natural resources, especially the definition and right over Minor Forest Product such as bamboo, remain unresolved. In general, the objectives of PESA have not been adequately realized in States with large tribal populations. The third Round Table of Minister in charge of Panchayati Raj was held at Raipur on 23-24 September, 2004 in which issues relating to the implementation of PESA were discussed. The Ministers of Panchayati Raj agreed to recommend to their respective governments, for joint acceptance by the Centre and the States, action points arrived at during the meeting. A copy of the conclusions reached during the meeting is enclosed at the Annex.

THIRD ROUND TABLE OF MINISTERS IN-CHARGE OF PANCHAYATI RAJ - RAIPUR, 23-24 SEPTEMBER 2004

Ministers in-charge of Panchayati Raj, and their representatives, bearing in mind the spirit of cooperative federalism which must inform the effective implementation of Panchayati Raj as set out in Part IX of the Constitution of India and related provisions, agreed to recommend to their respective Governments, for joint acceptance by the Centre and the States, the following points of action:

I. The Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA)

(i) The need to consult the tribal communities and their elected representatives in evolving criteria for the constitution of Village Panchayats and Gram Sabhas in Schedule V Areas, to ensure that tribal communities, on the basis of ethnic identities, are constituted into different Gram Sabhas even within a Gram Panchayat area.

(ii) The need to take steps to implement in a time-bound framework the provisions of PESA in respect of the rights of the Gram Sabhas in Schedule V Areas:

- to identify the beneficiaries of plans, programmes and projects undertaken for economic development and social justice;
- to grant approval to plans/programmes/projects for local development formulated by Village Panchayats;
- to authorize the issue of Certificates of Utilization of Funds for plans, programmes and projects undertaken by Village Panchayats.

(iii) The need to empower Gram Sabhas and Panchayats in Schedule V Areas:

- to safeguard community ownership of land and its resources and thus ensure that tribal land is not alienated;
- to ensure that they are necessarily consulted before any land is acquired for any purpose.
- to ensure that their right to ownership of Minor Forest Produce (MFP) is assured; that they can plan and manage minor water-bodies; and control and regulate how minor minerals are extracted, used and marketed.

(iv) To undertake wider consultation with other Government departments in order that the provisions of other legislation not compatible with the provisions of PESA are harmonized with the aims and objectives of PESA.

II Reservations for Women

(i) It is clear that women have been able to enlarge their representation beyond the minimum 33% prescribed by the Constitution. In Karnataka, 45% of the elected offices are occupied by women and in Uttar Pradesh, 54% of the Zilla Panchayats Presidents are women. Similarly, in Tamil Nadu, 36% seats of chairpersons of Gram Panchayats are occupied by women.

(ii) In promoting larger social objectives through PRs, States may be sensitized to issues of gender empowerment so that the unintended consequences of such policies is not to diminish the role of women in Panchayati Raj.

(iii) The Constitution does provide for the rotation of seats reserved for women but does not prescribe the number of terms for which seats may be reserved before rotation. Seats may be reserved for one term or two terms or more depending upon the provisions made by the State Legislature in the State Law. There are different practices being adopted in the different States and there are different practices under contemplation in several States. This being so, the option to reserve seats for more than one-term is open but it is for the State Legislature to decide the number of terms for which seats will remain reserved.

(iv) The empowerment of women through reservations in the panchayats is a necessary first step but needs to be reinforced by a number of other measures such as :

(a) the provision of Women Component Plans in the budgets of the PRs;

(b) linkages with Self Help Groups (SHGs);

(c) adequate training and capacity building;

(d) encouragement to political parties to put up women candidates;

(e) the opportunity to women to serve a full term when they are elected to posts in the PR system;

(f) Gram Sabhas (or equivalent) to facilitate women's concerns and priorities being raised in meetings of Gram Sabhas and Ward Sabhas (or equivalent sub-Gram Sabha forums);

(g) separate quorum for women's participation in Gram Sabhas and sub-Gram Sabha forums.

(v) Reservations to the post of chairperson in the PR system has been challenged in the courts of law, calling for an appropriate defence of the provisions in the court and jurisprudential clarifications of the issues involved.

III. Reservations for Scheduled Castes and Scheduled Tribes

Article 243D provides that seats for SC/ST be reserved on the basis of the SC/ST population in each Panchayat area. While by and large the States were faithfully following the provisions of Article 243D, problems arise where the percentage of SC/ST population is very low. The Round Table demonstrated that the cross-State experience of States dealing with this problem was very useful. Such

cross-State exchange of practices and experience may be encouraged.