

**STATUS OF IMPLIMENTATION OF PESA ACT**  
**IN THE STATE OF ORISSA**

Provisions in the Central Act	Provisions/changes in the State Act/laws.	Remarks
<p><b><u>Section-4</u></b>  <b>a)</b>-A State legislation on the Panchayat that may be made shall be in consonance with the <b>customary law, social and religious practices and traditional management practices of community resources.</b></p> <p><b>b)</b> A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.</p> <p><b>c)</b> Every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayats at the village level.</p> <p><b>d)</b> Every Grama Sabha shall be competent to <b>safeguard and preserve the traditions and customs</b> of the people, their cultured identity, <b>community resources</b> and the customary mode of <b>dispute resolution.</b></p> <p><b>e)</b> Every Gram Sabha shall-</p> <p><b>i)</b> <b>approve the plans, programme and projects</b> for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level.</p> <p><b>ii)</b> be responsible for the identification or selection of persons as <b>beneficiaries</b> under the poverty alleviation and other programmes.</p>	<p>Section-3 (1) of OGP Act.</p> <p>Section-4 (1) of OGP Act.</p> <p>Section-5 (6) of OGP Act.</p> <p>Section-5 (3) (a) of OGP Act.</p> <p>Section-5 (3) (b) of OGP Act.</p>	<p>Complied,  But it was suggested in a meeting taken by Govt. of India for some modification taking into consideration the list of habitations prepared by R.D Department for Drinking Water Supply Scheme. The R.D. Deptt. have been requested for supply of the list of habitations for the purpose.</p> <p>Complied</p> <p>Complied</p> <p>Complied</p> <p>Complied</p>

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<p><b>f)</b> Every Panchayat at the village level shall be required to obtain from the Grama Sabha a <b>certificate on utilization of funds</b> by that Panchayat for the plans, programmes and projects referred to in clause (e).</p>	<p>Section-5 (3) (b) of OGP Act.</p>	<p>Complied</p>
<p><b>g)</b> The <b>reservation of seats</b> in the <b>Scheduled Areas</b> at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution;</p> <p>Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;</p> <p>Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;</p>	<p>Sec.-10(3)(a) of OGP Act. Sec.-16(2) of OPS Act. Sec.-6(3) of OZP Act.</p>	<p>Complied</p>
<p>Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;</p> <p>Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;</p>	<p>Sec.-10(3)(a) of OGP Act. Sec.-16(2) of OPS Act. Sec.-6(3) of OZP Act</p> <p>Sec.-16(3-a) of OPS Act Sec.-8 (2)(a) of OZP Act Sec.-10(5) (b) of OGP Act</p>	<p>Complied</p>
<p><b>h)</b> The State Government may <b>nominate persons</b> belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the District level;</p>	<p>Sec-16(3-c) of OPS Act. Sec-6(6) of OZP Act.</p>	<p>Complied</p>
<p><b>i)</b> The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the <b>acquisition of land</b> in the Scheduled Areas for development projects and before re-setting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;</p>	<p>Section-3 (6) (b) of OZP Act. has been amended to consult the ZP before acquisition of land.</p>	<p>i)The Revenue &amp; Disaster Management Deptt. have issued executive instruction to the Collectors for obtaining recommendation of Gram Sabha during land acquisition process.</p> <p>ii) The Revenue &amp; Disaster Deptt have been requested to move the Govt. of India for suitable amendment of the Land Acquisition Act as it is a Central Act.</p>
<p><b>j)</b> Planning and management of minor <b>water bodies</b> in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;</p>	<p>The Z.Ps have been empowered to plan and manage in Section-3 (6) (c) of OZP Act</p>	<p>Complied,</p> <p>The definition of Minor Water Bodied has not been defined in</p>

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<p><b>k)</b> The recommendations of the Gram Sabha or the Panchayat at the appropriate level shall be made mandatory prior to grant of prospecting license or <b>mining lease</b> for minor minerals in the Scheduled Areas;</p> <p>l) The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor <b>minerals by auction</b>;</p> <p>m) While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, in State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-</p> <p>(i) Power in enforce prohibition or to regulate or restrict the sale and consumption of any <b>intoxicant</b>.</p>	<p>Amendment Section-3 (6) (a) of OZP Act provides for approval of Z.P. in the matter.</p> <p>Amended Section-3 (6) (a) of OZP Act.</p> <p>(a) Amended Section-44(2) (a) of the OGP Act, 1964 empower the Grama Sabha of the GPs in the Scheduled Areas to exercise control over manufacture and sale of intoxicants.</p> <p>(b) The Bihar and Orissa Excise Act has also been amended to require prior approval of the Grama Sabha to license manufacture or sale of liquor within a GP in the scheduled areas. The Excise Department have already instructed the Collectors to implement the</p>	<p>the PESA Act. Which is awaited</p> <p>Complied,</p> <p>The Steel &amp; Mines Deptt. of the State have the same provision under Rule 10 (1) &amp; 16 (1) of OMMC Rules 2004 as per the PESA Act.</p> <p>Complied</p> <p>Complied</p>
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<p><b>(ii) The ownership of minor forest produce.</b></p>	<p>amended provisions in giving licenses to liquor vendors in Scheduled Areas.</p> <p>(a) Amended Section-44(2)(b) of the OGP Act, 1964 provides that ownership of MFPs in the scheduled Areas is vested in the GPs.</p> <p>(b) A new policy on minor forest produce was notified by the Forest and Environment vide their resolution No.5503 F&amp;E dt. 31.3.2000 <u>in which 68 (sixty eight) items</u> have been specified as Minor Forest Produce ownership over these MFP items has been transferred to GPs except MFPs growing in Reserve Forests, Sanctuaries and National Parks. K.L., Sal Seeds and Bamboos have not been included in the list of Minor Forest Produce. But in the mean time, sal seeds has been included. In the schedule of Minor Forest Produce vide Forest and Environment Department Notification No.7220 Dt. 18.7.06. Thus <u>69</u> items of MFP have been transferred to GP for their regulation and management.</p>	<p>Complied</p> <p>The Forest &amp; Environment Deptt have been requested to include 6 more MFPs in the list and to transfer its ownership to GPs for management etc as per recommendation of committee constituted in the State. Ownership of 69 MFPs have been transferred to the G.Ps except Bomboo and Kenduleaf</p>
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<p>(iii) Power to prevent <b>alienation of land</b> in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.</p> <p>(iv) Power to <b>manage all kind of village markets</b>.</p>	<p>(c) The OGP (Minor Forest Produce (Administration) Rule,2002, which prescribes the manner of regulation and control of trade in Minor Forest Produce by Grama Panchayats in the Scheduled Areas.</p> <p>(a) Amended Section 44(2)(c) of the OGP Act.1964 has a similar provision.</p> <p>(b) The Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 has been <u>amended by regulation</u>. I to 2000 which interalia provides that proceedings for eviction of an illegal occupant of Tribal land can be initiated on the report of a Gram Panchayat. Besides, prior approval of the Grama Panchayat with concurrence of the Grama sasan has been made mandatory before any land in scheduled areas can be settled by competent authority with a non-tribal. Beside, it is mandatory for the competent authority to inform the Gram Panchayat about all orders of ejection of restoration of land to the tribal made by them.</p> <p>(a) The amended Section 58(5) read with</p>	<p>Complied</p>
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<p>(v) Power to exercise control over <b>money lending</b> to the Scheduled Tribes.</p>	<p>proviso to Section 59 of the OGP Act.1964 provide similar powers to the GPs in the scheduled Areas as well as other areas of the State.</p> <p>(b) As per provision U/S 58 of OGP Act. The application of Orissa Agricultural Produce Marketing (OAPM) Act in the GP areas <u>has been excluded.</u></p> <p>(a) Amended Section-44(2) of the OGP Act has vested similar powers on money lending to the Grama Sabhas.</p> <p>(b) The Orissa (Scheduled Areas) money Lenders Regulation,1967 has been amended empowering the GP to exercise, control over money lending and issue of license of Scheduled Areas in 2001 to provide that in the Scheduled Areas any person can be advanced loan by a money lender only if this has been recommended by the Grama Panchayat with prior concurrence of the Grama Sasana. For loans advanced without such prior recommendation the debater shall not be liable.</p>	<p>Complied</p> <p>Complied.</p>
<p>(vi) Power in exercise <b>control over institutions</b> and functionaries in all social sectors.</p>	<p>(a) Section 20(5) (i) and 20(5) (ii) of the Orissa Panchayat Samit Act and</p>	

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<p>(vii) The power to <b>control over local plans and resources</b> for such plan including tribal sub-plans.</p>	<p>Section 3 of OZP Act and Section 5 (3) (a) of OGP Act have the corresponding provisions.</p> <p>(b) In consistent with the provisions of 73<sup>rd</sup> amendment of the constitution, the State Government have devolved powers and authorities of 21 functions of 11 departments to the control of 3 tier PRIs. Three Tier PRIs have been provided with functionaries to manage the programmes to PR Department only. Functionaries of the line Departments have been made accountable before the 3 Tier PRIs for implementation of the devolved functions.</p>	<p>Complied.</p>
<p>(n) The State legislations that may endow Panchayats with power and authority, as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha.</p>	<p>The State Legislation has endowed the 3 tier PRIs with power and authority to enable the PRIs to function as institution of self Govt. Provision of statutory Laws have been amended accordingly. Law prevents higher Panchayats to interfere on lower Panchayats.</p>	<p>Complied.</p>
<p>(o) The State Legislature shall endeavor to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangement in the Panchayats at district levels in the scheduled Areas.</p>	<p>It has been done</p>	<p>Complied.</p>
<p><b><u>Section-5</u></b></p>		

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<p>Notwithstanding anything in Part-IX of the Constitution with exceptions and modifications made by this Act. Any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President.</p> <p>Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed in that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council by each house of the Legislature of that State.</p>	Being followed.	
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**Views of different Line Departments have been called for for finalization of Orissa PESA Rule**

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