

Grassroots Governance In Scheduled Areas In India: The Way Forward Of PESA Act

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Abstract: Democracy is the strongest tool of any political system; through democracy we can select our representatives. To implement this system, we have the Panchayati Raj, which is the oldest system of local Government in India. It sprang up from the dream of Mahatma Gandhiji, who wanted to decentralise the political system of India. The Panchayat (Extension to Scheduled Areas) Act (PESA Act) 1996 to decentralise powers and strengthen democracy at the grassroots level. Therefore, the PESA Act seems to be a viable solution to tackle the problems of Tribes. It provides wide opportunities to tribals in decision-making and development process at the grassroots level and eliminates the feeling of apathy or isolation prevailing among these sections due to burglars, encroachment of their areas and resources as well as their deprivation from their traditional means of livelihood or inaccessibility to their resources. As the PESA Act is in operation for more than one-and-a-half decade and the government has earmarked special funds and grants for these areas under the 12th plan on the recommendation of second Administrative Reforms Commission, it becomes pertinent to evaluate its impact on tribal people particularly in terms of self-governance and empowerment. The main constraints for enforcing the PESA Act have been highlighted some remedial steps to make it more viable and pragmatic. This Act was framed in conformity with traditional tribal self-rule by entrusting extraordinary powers to Gram Sabha which is not laid down in the national framework of Panchayati Raj Institutions (PRIs). Ministry of Panchayati Raj (MoPR) has commissioned certain studies, made recommendations to other Ministries and State Government for amendments in certain subject laws which are in conflict with the Act, issued circulars and guideline to frame model rule and so on. Almost two decades have passed after enactment of this most powerful Act. Governments of the concerned States have made very little progress in implementing this central Act in letter and spirit. The present paper tries to focus on PESA Act made for the welfare and upliftment of Scheduled Tribes. The 73rd and 74th Amendments for the first time accepted that schedule area needs separate law and so it was not enacted in schedule area. After eye-opener finding of the Bhuriya Committee, the PESA Act was passed in 1996 in India. The said Act started providing many benefits to the tribal community like rights on natural resources, preservation of their culture and customs and right to select the beneficiaries for various government schemes which if properly utilized have potential to provide social security, residential facilities, occupational opportunities to the scheduled tribe's people.

Keywords: Local Governance, Panchayati Raj, PESA, Scheduled Areas, Scheduled Tribes

I. INTRODUCTION

PESA is innovative because it legally recognizes the capacity of tribal communities to strengthen their own systems of self-governance or create new legal spaces and institutions that can not only reverse centuries of external cultural and political onslaught but can also create the opportunities to

control their own destinies. The Gram Sabha of the village becomes the local institution, endowed with significant powers. For instance, under section 4(d) of PESA: "every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

Many administrators, academicians, activists, NGO workers and other Civil Society actors who are working/keeping interest among tribal communities argue that the institution of Gram Sabha is non-existent in most tribal areas and that the law does not recognize the socio-economic changes that have taken place in tribal society for the past two centuries. They argue that modernity, the external market, representative democracy and centuries of exploitation have transformed tribal communities to the point where a recovery of a cohesive community could well turn out to be a romantic invocation with no basis in reality.

PESA is an opportunity and it is flexible enough to mould to local conditions. For instance, even if an institution called Gram Sabha is unknown, it can provide the basis, under changed conditions, of a new democratic institution that the Tribals themselves would come to recognize as an organic entity that facilitates the restoration of their comprehensive rights. PESA even makes it possible to redraw the administrative boundaries that presently inform their governance. The enactment of PESA reveals the reluctance of administrative machinery to empower the Gram Sabha in developmental planning as well as communal ownership over the processes and control over the resources amongst the tribal through Gram Sabhas.

In the whole journey of the tribal Self Rule especially PESA since its inception, there are several internal challenges cropped up which have to be addressed on a war-footing basis. This is high time that the indigenous peoples will no longer give way. Across the country, there is growing demand for greater transparency of Government functioning and greater participation in defining what the content of development should be. Additionally, there are steadily growing instances of innovative efforts to redefine the structure and content of democratic institutions so that power emanates from the people. This has brought into sharp focus the severe limitations of representative democracy and the need to recognize and strengthen structures of direct democracy, particularly where communities depend on natural resources for sustaining their livelihoods.

The 73rd Constitutional Amendment Act, 1992 ushered in a national framework for local self-governance by creation of Panchayati Raj Institutions (PRIs). This national framework was more or less uniformly applicable in all the States except Scheduled Areas prescribed in the Constitution of India. The Parliament enacted PESA - The Provision of the Panchayat (Extension to the Scheduled Areas) Act, 1996 in conformity with the traditional tribal practice of local governance to cover those Scheduled Areas¹. It is one of the most powerful Acts in India which recognizes the indigenous rights of the tribes over their natural resources. This Act has laid special thrust on empowering Gram Sabha which has not been conferred by any other Act in any State. The provisions made in this Act are far reaching in their implications, yet there are several problems in putting the provisions in place. All nine states having Scheduled (or Schedule – V) Areas namely; Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan have enacted their State legislations more or less in pursuance with this central Act. Efforts have been made by the Central Government also to amend certain Acts, Rules and policies

which are in conflict with this Act. State Governments have been requested to amend certain subject laws which are not to the tune of the spirit of the Act. Certain States have made headway in this direction but still, there is something more to be done to implement the Act in letter and spirit.

Integrating Institutional reforms, both in the context of social and economic, in local governance was Gandhi's far sighted vision of 'Purna Swaraj'. In terms of economic growth rate, cultural assimilation and global political interests, India during the last 60 years has achieved significant milestones. In recent decade, economic reforms and local self-government are the two major initiatives that were launched in 1990s. Economic reforms were implemented in the format of Liberalization, Globalization and Privatization (LPG) whereas local self-government was implemented in the form of Panchayati raj in rural areas and municipalities in urban areas.

The Government implemented the 73rd Constitutional Amendment Act and enacted a separate law called Panchayats (Extension to the Scheduled areas) Act, 1996 "PESA" for scheduled areas that are exempted from the above Constitutional Amendment. A Committee headed by Mr. Dileep Singh Bhuria was appointed in 1994 by Narshima Rao government to analyze to how structure similar to Panchayati Raj Institution can be implemented in tribal areas and to structure their power. The Committee in its requests submitted in January 1985.

OBJECTIVE OF THE STUDY

The objective of this paper is to understand the grassroot governance and functioning of Panchayati Raj institutions in scheduled areas in India and how far these lead the way to the participatory governance of tribes in local governance processes.

II. METHODOLOGY

The present paper is based on the secondary data collected from secondary sources in the form of published literature on the subject. The various sources include reports on PESA, Panchayati Raj, and research papers found in Economic Political Weekly, publications by Ministry of Panchayathi Raj, and materials found in websites related to 73rd Amendment in Panchayathi Raj Institutions.

III. CHALLENGES TO OPERALISE PESA ACT

In PESA Act, we find that this act comprises a prismatic features but after 16 years we are nowhere with this act. State governments fully failed to operationalise the PESA mandate. We can summarize this in following statements:

- ✓ The state legislation has omitted some of the fundamental principles without which the spirit of PESA cannot be realized.
- ✓ PESA Act provides all the power to gram sabha but unfortunately the state legislations has taken out all the powers from the gram sabha in the shade of legal language.

- ✓ The PESA act strictly laid the recommendation for land acquisition for development projects with this gram Panchayat have the power to prevent alienation of land in the scheduled areas and to take satisfactory action to restore any alienated land of scheduled Tribes. But unfortunately state governments haven't laid any rules in this regards.

These are the core challenges before this act and without resolving them, we cannot operationalise this act properly.

"The unfortunate confrontation between the tribal people and the state that has been accentuating ever since independence will dissipate and disappear once the traditional system of the tribal people is taken as the foundation of governance in the tribal people is taken as the foundation of governance in the tribal areas.³ The people will be able to perceive the supra structure of administration as continuation of their own system with no traces of antagonistic relationship'. This statement sums up the great expectation of the Bhuria Committee (Feb.1995).

IV. PESA-THE MYTH AND THE REALITY

The Panchayati Raj Act made an image that Gram Sabha is the solution to self governance. The scope for direct democracy to see the entire aspects positive, negative, critic, approvals or reflections of proposed of Gram Panchayat and also supervising its performance. The Mungekar Committee 2009 stated that, "The most sensitive aspect of Tribal life is self governance. Even the British were forced to recognize and reconcile themselves to this fact. That is why they resorted to the creation of 'excluded area' through the government of India act 1919. The administrators and lawmakers that the tribal people had a strong functioning system of self-governance forgot it. This omission has had adverse and disastrous consequences in some cases. The community was greatly handicapped in facing the new situation that has resulted in serious unrest throughout tribal India."

Whereas the Bhuria Committee concluded:

"Tribal life and economy, in the not too distant past, bore a harmonious relationship with the nature and its endowments. It was an example of sustainable development with the influx of outside population, it suffered grievous blows".

With all these criticisms, we all know that this act works towards the empowerment of the Gram Sabha and Panchayats. Still some issues should be resolved as soon as possible:-

- ✓ Is it desirable to introduce provisions for reservation of women in PESA rules, which are always under-represented?
- ✓ Is the state laws should be made harmonize with the provisions of PESA?

V. PRESENT SCENARIO

The union and state legislations that impinge on provisions of PESA, Government of India may consider insuring specific directions to it accordance with the power given to it under provision 3 of part A of the fifth scheduled. Performances of the sates in the amending their Panchayati

Raj Act and other regulations to bring them in line with the provisions of the Panchayati Act, 1996 (PESA) and in implementing these provisions may be monitored and incentivized by the union ministry of Panchayati Raj. So, according to second administrative report, there is a need to modify the provision of PESA for better implementation. In short we can say that, the PESA is a bold statement which is addressing issues such as the tribal's customary rights, cultural rights, language and identity, in addition to rights to all resources with their domain such as land, water, forests and minerals, among others. Union minister, Panchayati Raj Manishanker Aiyer said that "the making of Panchayati Raj has become ineluctable, irremovable, irreversible, which constitutes in itself a major institutional success."

VI. THE WAY FORWARD

Discontent is brewing up in the tribal belt of the country and effective implementation of PESA would be a definite legal as well as political solution to redress the discontent. In recent years the legal and institutional basis for the welfare and development of Scheduled Tribe community had broadened and surveys have indicated that people in the tribal belt trust the state as the agency which can ameliorate their lot. But, implementation of PESA has not been seriously attempted by the state governments. They still want to govern the PESA areas through the centralized administration and laws that actually weaken what PESA provisions offer the tribal community. There is hardly any willingness on the part of the officials of various departments to relinquish control on resources and functions that are given to the Gram Sabhas by PESA. Nor do they have any respect for tribal lifestyle and culture.

Difficulties in implementing PESA can be broadly categorized into two: (1) Legal difficulties and (2) Political difficulties. Legal difficulties are related to the (a) definition of village, (b) gaps and inconsistencies between the Central and the State Acts, (c) clash between PESA and pre-existing laws, (d) lack of clarity about customary practices and cultural identity etc. Whereas political problems include (a) lack of political will, (b) ignorance about PESA among different segments, (c) fragmentation of well-knit tribal society because of electoral competition etc. So, a multipronged strategy needs to be adopted by the government to overcome those difficulties from different aspects.

All nine States having Scheduled Areas have enacted or amended their State Acts but not in consonance with the letter and spirit of the Central PESA. If we have a comparative analysis of the State Acts and the PESA Act we can find the fact that the PESA Act has been much diluted in the process of ratification by the states. There are number of state subject laws and policies which are not in conformity with PESA. At this juncture, central government has to play proactive role to implement the Act across the nine states. State governments need to take the steps just like Central Government positively. Civil society has to work more vibrantly on right based approach to protect the rights of the tribal population of the country. As per the recommendation of different Working

Groups engaged by the Central Government, the following measures may be taken by all concerned:

- ✓ The Ministry of Panchayati Raj has issued guidelines for implementation of PESA on 21.05.2010 which is generic in nature. A detailed state specific guideline considering existing conflicting laws should be in place incorporating the suggestions from already engaged expert agencies. It should also be guided by a definite time frame.
- ✓ The MoPR should play proactive role to involve Ministry of Tribal Affairs to issue guideline to the states before preparation of respective State Plans. All issues concerning the lives of tribes in Scheduled Areas should be taken care of during preparation of plan.
- ✓ Government of India should issue specific directions in accordance with provision 3 of part A of the Fifth Schedule if any State fails to implement PESA in letter and spirit.
- ✓ The Central Government should direct the States to gear up the process of amendments to existing laws so that it follows the provisions of PESA in letter and spirit.
- ✓ v. A High Power Committee at the central level may be formed to oversee the progress of the concerned States regarding implementation of PESA. This Committee can play advisory role with concrete suggestions to restrict deviations by the states.
- ✓ Though there is provision for taking annual reports from Governors on regular basis but it is not given due importance. The process should be taken up seriously. The report should be made available to the public by uploading it in the website in a time bound manner.
- ✓ Traditional tribal councils are dominated by male by and large in all respective states. Hence, in order to ensure active participation of women in tribal governance, special attention should be given. Appropriate measure should be taken to ensure at least one third participation of women in all meetings at the Gram Sabha level.
- ✓ There is also an urgent need to amend the Indian Forest Act, Land Acquisition Act, and other related Acts so that the ownership on minor forest produce, water bodies and land resources are explicitly handed over to the Gram Sabhas of the PESA areas.

The only hope for realising 'effective decentralization in Schedule Areas' seems to lie in transferring all the items from the non-obligatory provision list to the mandatory provision list leaving no chance for any state government to retain important powers to themselves. Otherwise, the usual story of manipulations being resorted to by the state governments to retain power will continue to persist in the future.

VII. CONCLUSION

PESA is the most powerful legislation which can play an instrumental role in recognizing the rights of the tribal population in Scheduled areas over natural resources thus transforming their quality of life. It is almost true that due to lack of political will, their rights have been disregarded strategically. The Constitution 73rd and 74th Amendments Act implemented in April 1992 envisages a major reform of governance in the country. Therefore, necessary changes in terms of administrative, planning, financial and personnel systems are required for the successful implementation and functioning of the Act. Undoubtedly, PESA gives radical governance powers to the tribal community and recognize its traditional community rights over natural resources. It is an important step by the Indian State to make the system more participatory in real meaning. However, the reasons why PESA failed to deliver has been a result of the lack of clarity, legal infirmity, bureaucratic apathy, lack of political will, resistance to change in power hierarchy and so on. So the need is to work upon all the drawbacks of PESA that continued to be hailed as a fundamental departure to local self governance that would really usher in participatory democracy and genuine empowerment of the people. Despite PESA being in force for about 20 years, much needs to be done to ensure that the benefits of this remarkable legislation reach the grassroots level of democracy.

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