

Decentralization of Panchayat Extension in Fifth Scheduled Area : From Amendment to Implementation

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Abstract

Decentralization is usually referred to as the transfer of powers from Central government to lower levels in a political administrative and territorial hierarchy. Mahatma Gandhi propagated the idea of Swaraj and his dream came true after the 73rd amendment which made panchayat as the government of three tiers with reasonable substance and contents in terms of power and authority as well creating adequate space for women and marginalized groups in the federal setup. After the implementation of the 73rd amendment, some amendments regarding the legal provision of PRI in Fifth scheduled area were needed. The committee of D.S. Bhuria recommended that Scheduled tribes have their own traditional way of local governance which regulate the local administration and judiciary system. After the recommendation, there was an amendment to the Constitution, known as Panchayat Extension in Scheduled Area (PESA), 1996. PESA is the most important piece of legislation in their favor, the single most significant article in the constitution for them. The article through which the implementation of PESA can be assured is Article 244(1) which relates to the fifth scheduled area. The study will analyze the constitutional amendment and their grass root implementation. Further, the paper seeks to examine the amendment to the implementation of Panchayat Extension scheduled area.

Keywords : Decentralization, PESA 1996, Scheduled area, Scheduled Tribes.

Introduction

The idea of decentralization is now universally accepted. Decentralization has played a significant role in matters of improving governance in the global world. In the last couple of decades, it has become a very fashionable term. The topic of decentralization is synonymous with that of accountability (Manor, 1999, cited by Mathur, 2014). Decentralization combined with democratization might provide greater transparency, accountability, responsiveness (Raghunandan, 2015), probity, frugality, efficiency, equity and opportunities for mass participation (Crook & Manor, 1998). Using the concepts such as Local Self Government, Local Government, Grassroots Democracy, Grassroots Institutions, Panchayat Raj, Local Body Institutions, Empowering People, Small Government Approach and Decentralized Governance interchangeably to connote the same meaning of developing powers and responsibilities from higher level governing institutions to lower level governing institutions (Palanithurai, 2002). Democratic decentralization through Panchayat Raj Institution has been part of India's development discourse and its debates on participatory governance (Arora, 2009).

India has a strong tradition of 'democratic' institutions. The process of Democratic Decentralization was envisaged as a vehicle of rapid development at the local level. With the participation of the local people in the planning and implementation of different schemes, the basic needs of the people would be effectively tackled. Decentralization was being grounded in the social and political organization of local habitations. Though these institutions like village communities have transformed, they have never been socially and politically

recognized, which is central to local due to the a variety of discriminations such as caste and gender. "Report of the select committee of House of Commons said that the village communities were little republics, having nearly everything that could want within them, dynasty after dynasty tumbled down, revolution succeeds revolution, but the village community remained the same, this union of the village communities, each one forming a separate little state in itself" (Bijoy, 2012). It has contributed more than any other cause to the preservation of the people of India and their enjoyment of freedom and independence.

The British government introduced local self-governing institutions with popular mandate and control over local affairs in 1919. After this, a number of provinces and princely states enacted laws like Village Panchayat Acts in Madras, Bombay, Central Provinces and Uttar Pradesh in 1920; Self-government Act in Bengal in 1919, Bihar in 1920 and Assam in 1925; and the Panchayat Act Punjab in 1922 (Bijoy, 2012). After this, the British Government introduced Provincial autonomy and elected governments in 1935. After independence, Panchayat Raj did not find a place in the draft of the Constitution. The debate started that the village is a sink of localism, a den of ignorance, narrow-mindedness, and communalism. But Article 40 in the Directive Principles of State Policy of the Constitution states: "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" (Mukhopadhyay, 2012).

The passing of the constitution bill on 22 December 1992 by parliament to incorporate the panchayats in part IX of the constitution has set

right a serious lapse in our constitution (Mathew, 2002). The 73rd and 74th amendment acts of Constitution planned to strengthen local government by the distribution of powers and funds to them. These approaches have been widely respected for their democratic content and development potential.

History of PESA

Prior to the introduction of the statutory panchayat in the district, the traditional panchayat of the tribal was active and functioning for maintaining the solidarity of the society based on the customary rules of the tribal community (Narayan, 1981). The Government of India Act 1935, which introduced special measures for the protection of tribes in India, had earlier reclassified the tribal region of the country into excluded and partially excluded areas (Kurup, 2008). Over the decades since the decadent feudal land-lordism with its oppressive exploitation began crumbling, both these viewpoints seem to have progressively moved upfront to finally converge with Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA). A legal provision like PESA secures the participation of tribal communities through limited self-government and contributes to their level of advancement (Kurup, 2008).

The tribal societies are familiar with the regulation of their domestic, religious, social, economic, socio-political and judicial affairs at the grass roots level through their traditional tribal councils and collective wisdom of the people in the villages. Although the Seventy-Third Constitutional Amendment Act, 1992 included many important provisions with regard to panchayats, yet it restricted the application of part IX provisions to the Scheduled and Tribal Areas under Article

243(M). Consequently, Mr. D.S. Bhuria was appointed chairman of the Committee to recommend modifications in the Amendment Act that are needed for its application to the Scheduled and tribal Areas. The committee submitted its report in January 1995 and after that, the Panchayats Extension to the Scheduled Areas Act, 1996 was enacted on 24 December 1996. PESA is applicable to the scheduled areas, a framework of law which is essentially a set of exceptions and modification that need to be adhered to while implementing the Panchayati raj in Scheduled Areas.

Distinctive Features of the Provision of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

Generally, tribals are isolated from dominant mainstream societies. They are dominant in Northeast and Central India. The difference between northeastern and central Indian tribes is that northeastern tribes are more socially advanced as compared to the rest because they have been given considerable autonomy under the constitution. While the tribes in the rest of the country have been placed under the support of provincial government (Kurup, 2008). A perusal of the mode of composition of the panchayats of Scheduled areas as well as the powers and functions entrusted to them would show that such arrangements pave the way for the participatory government (Purohit, 2002). The provisions of the Panchayats (Extension to the Scheduled area) Act, 1996 extends to the Panchayats in the Fifth Schedule Areas of nine States which are Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Chhattisgarh, and Rajasthan. The following are the major features of the Extension Act:-

- (i) Any legislation on the Panchayats for Fifth

Schedule Area shall be in agreement with the customary law, social and religious practices and traditional management practice of the community resources of its inhabitants (Menon & Sinha, 2003).

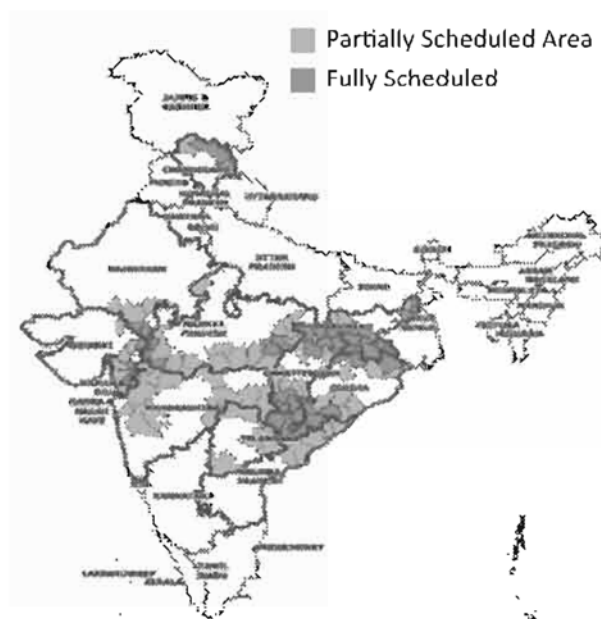
(ii) Gram Sabha will be the first formal institution with its task being to facilitate the Gram Sabha within its jurisdiction. It will prepare and implement all development plans subject to the approval of the Gram Sabha. The Panchayat will be responsible (Kothari, 2008) for the Gram Sabha, which is empowered to approve plans, programs and projects for social and economic development, to identify persons as beneficiaries under the poverty alleviation and other programs, to give certificate of utilization of funds for various plans and programs (Pal, 2000). There are a number of powers given to the Gram Sabha, which are: ownership of minor forest produce, approval of development plans, selection of beneficiaries under various programs, consultation on land acquisition, control of minor minerals, regulation of prohibition of sale of intoxicants, prevention of alienation of land and restoration of unlawfully alienated land of STs, management of village markets, control of money lending to STs, giving utilization certificate for funds used for the projects and programs of social and economic development etc. to the village Panchayats (Singh, 2002). PESA provides that local communities in scheduled areas are entitled to manage "minor water bodies" (Kurup, 2008).

(iii) As for the reservation of the seats for the Scheduled Tribes at all tiers of the Panchayats, it shall not be less than half of the total number of seats. Reservation for

other communities indicated in part IX of the Constitution shall be in proportion to the population of such communities (Prasad & Annamalai, 2013).

(iv) The Chairmanship at all levels of the Panchayats shall be reserved for the STs. In case the STs do not have representation at intermediate or apex level of Panchayati Raj system, the state Government shall nominate such unrepresented Scheduled Tribes, but such nomination should not exceed one-tenth of the total elected members of the Panchayats (Menon & Sinha, 2003).

Gram Sabha is considered as the most powerful foundation of decentralized governance. Though vision is comparable to parliament and assembly, it could not become a vibrant institution due to inefficient leadership and bureaucracy (Singh, 2002).



Source- <http://pesadarpan.gov.in/gis>.

Status of Grass Roots Level Implementation

Madhya Pradesh amended Panchayat Adhiniyam, 1997 and added chapter XIV for Panchayat extension which delineates the constitution of Gram Sabhas, Gram Panchayats and prescribes the mode of reservation of seats for them along with the powers and functions of these institutions of the scheduled areas (Singh, 2002). Andhra Pradesh and Maharashtra have given certain powers to Gram Sabha at the grass roots level to safeguard and preserve the traditions and customs of the people, their cultural identity and community resources and the customary mode of dispute resolutions, to manage natural resources including land, water and forests within the area of village in accordance with its traditional harmony and etc. (Pal, 2000). Provisions contained in Orissa and Andhra Pradesh Panchayat Act imply that for dispute resolutions provisions of IPC and CrPC would be applied instead of applying tribal customs and traditions.

Andhra Pradesh and Gujarat have given powers to Mandal Panchayat and Taluka Panchayat for prior consultation before acquiring land for development of projects and before resetting or rehabilitation of the affected persons (The Report, 2011). The Orissa Panchayat Act has given this responsibility to the Zila Panchayat. Rajasthan Panchayat has given this power to the Gram Sabha or Panchayati Raj institutions as may be prescribed. While Himachal Pradesh and Maharashtra have done what is prescribed in the spirit of the Extension Act to the Gram Sabha. The Andhra Pradesh PESA Act has provided that every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and without being detrimental to any laws for the

time being that enforce the customary mode of dispute resolutions (section 242 C(1) (The Report, 2011). The Central Act says that there must be the consent of Gram Sabha for land acquisition in scheduled area, but in Jharkhand, this is done under the Jharkhand PRI 2001 under the section 10(8). Some states have implemented PESA partially. Rajasthan is a prominent example, where a State Act based on the central PESA was passed in 1999, but rules were not formulated until 2011 (Choubey, 2015). In Jharkhand, a committee constituted by the speaker of Legislative Assembly of the respective state, under the chairmanship of Deepak Birua (MLA), submitted a report which underlined the need to implement PESA at the grass roots level in Jharkhand (the current Panchayat system is illegal in scheduled area, 2016). Union government must take recourse to the fifth schedule to ensure the implementation of PESA because this has been very poorly implemented across the nine states (Aiyar, 2013). The Manishankar Aiyar Committee has also recommended that Gram Sabha should be fully empowered as per PESA to have control on land alienation, community resources, mines and minerals, intoxicants and non-timber forests produces etc. (Aiyar, 2013).

Instead of Fifth Scheduled Area, Uttaranchal has Van Panchayats which are under Uttaranchal Panchayati Forest Rules Act 2001. It empowers the 'Sarpanch' and is responsible for panchayat forests. It is also responsible for distribution of the produce among right holders, regulation of grazing, cutting of grass, collection of fuel wood, and levying of fees to meet administrative expenses (Kumar, 2013).

The legal provision of Panchayat Extension is for the empowerment of the scheduled tribes at the grass roots level, but it has not been

implemented yet completely. A very little number of tribal people are aware of the Amendments and their provisions; they are deprived of the benefits due to their ignorance and apathy of enforcing agencies. A grass root experience suggests that majority of the panchayat representatives and villagers are not aware of the quorum required for Gram Sabha meetings (Singh, 2002). As per the provision of the PESA Act, all of the nine states have taken necessary action. But the objects of the PESA Act are primarily fulfilled. This Act gives powers to the tribal panchayat but it needs more clear and transparent provisions (Shirsath, 2014). The new extension also opens opportunities for NGOs in the Scheduled areas, which can positively help the panchayats and the people living in these areas through training of panchayat representatives, particularly women representatives in project formulation and implementation awareness among tribal people about various government programs, literacy programs, agriculture and extension and development, watershed schemes, utilization of common property resources, planning resource mobilization etc. (Purohit, 2002).

What Action Needs To Be Taken?

According to Choubey (Choubey, 2015) PESA does not specify rule making power or provide a time period by which states have to frame rules (Choubey, 2015). There is an immediate requirement of an autonomous body to monitor the implementation and free its functioning from the clutches of corrupt officials in the last 20 years of its introduction. There is the need for an extension of newer Scheduled areas, where tribals are dominant but their decision-making at the grass roots level is weak. The Bhuria Committee had also presented Municipal Extension Scheduled Area (MESA) for the preservation of customary rights, their culture

and their decentralization of power in Cities and Municipal areas where the tribal population is dominant. The need of the hour is to add MESA and the grass roots implementation of PESA in Fifth scheduled areas strictly. It will help in the preservation of customary rights, tradition, custom and culture of tribal people, as their existence is endangered. This is our moral responsibility to give them opportunity and let them decide to come in the mainstream.

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