



THE FIFTH SCHEDULE AND GRASSROOTS DEMOCRACY: A CRITICAL STUDY OF TRIBAL SELF-GOVERNANCE IN JHARKHAND

Dr. Sadanand Pandit

Assistant Professor, ICAFI Law School, The ICAFI University, Jharkhand

Abstract:

A Government run by the local people who are concerned with the local issues where all the local people can participate in all the concerns and the functions of the government. The local self-governing institutions in India have attained prominence in formulating decentralised planning following enactment of the 73rd and 74th Constitutional (Amendment) Act, 1992 which are placed in Part IX and IXA of the Constitution respectively. The Act provides ample scope to the local governments for developing and implementing local plans in India. In order to protect the interests of the scheduled tribes, the provisions of fifth and sixth schedules are enshrined in the Indian Constitution under article 244. Article 243M of the Constitution, while exempting the fifth schedule areas from Part IX of the Constitution, provides that Parliament may by law extend its provisions to the scheduled and tribal areas subject to such exceptions and modifications as may be specified in such law and no such law shall be deemed to be an amendment to the Constitution. The fifth schedule areas now have the PESA Act 1996 which focuses on developing the Gram Sabha. The PESA Act is a significant step towards promoting participatory planning in scheduled areas in India. This paper envisages knowing whether the fifth schedule provisions are being applied in scheduled areas in letter and spirit. Because, many areas in tribal central states of India are trying to experiment with the PRI system adapted to local needs. It presents an overview of continuities and changes of the local self-governing institution existing in the form of Munda-Manki, Manjhi-Pargnait, Pahra-Raja etc., system in scheduled areas of Jharkhand. It also reveals that structural impediments and functional incapacity of the local governments in the scheduled areas have hampered the spirit of such institutions with regard to the planning and implementation of the development programmes.

CORRESPONDING AUTHOR:	RESEARCH ARTICLE
Dr. Sadanand Pandit Assistant Professor, ICAFI Law School, The ICAFI University, Jharkhand Email: sadanandpandit77@gmail.com	

Keywords: Decentralisation; Fifth Schedule; Governance; Schedule Area; Tribes.

Introduction

The concept and practice of local self-governance in India is as old as its history. Self-governing village bodies known as Sabhas existed even during the Rig-Veda period. These bodies, which consisted of five members, have gradually acquired the name of Panchayats and were found in almost every village. Enjoying considerable executive and judicial powers, these councils distributed land, collected the land revenue on behalf of the government. During the Cholas heydays, they developed a highly efficient local self-government. In the same manner, albeit in varying degree, evidences of self-governance are to be seen in almost all the kingdoms of Indian sub-continent. However, the introduction of feudal chiefs and revenue collectors from the Mughal period onwards gradually weakened the Panchayats role, especially in the collection of land revenue. Panchayats were further weakened with the establishment of local civil and criminal courts, revenue and police organisations during the British rule. In British India, Ripon took the initiative to give its due place in his scheme of governance, though not in democratic spirit. During the national movement for independence and in Independent India, Mahatma Gandhi championed the cause of local self-governance which now crystallized in the form of Panchayati Raj and is provided under Article 40 of the Constitution.

The idea finally became a reality in the form of the 73rd and 74th Constitutional (Amendment) Acts, 1992 which came into force on April 24 and June 1, 1993, respectively. It provides for a three-tier system of **Panchayati Raj** in every state – at the village, intermediate and district levels. Initially, these amendment Acts were applicable to the general areas of the nation. Scheduled areas were excluded from the application of the 73rd and 74th Constitutional (Amendment) Acts, 1992. Accordingly, a provision was made under Article 243 M (4) (6) as: “Parliament may by law, extend the provisions of this part to the scheduled areas... subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368.” A significant development in regard to the self-government in the scheduled areas is the extension of the provision of the Part IX of the Constitution to the scheduled areas through the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (hereinafter PESA).

Fifth Scheduled Areas

The fifth schedule is the source of tribe’s self-rule in scheduled areas of India. The preservation of tribe autonomy, culture and economic empowerment is the objective of the 5th Schedule of the Constitution. It ensures justice; namely, social, economic and political, to the STs. The provisions of 5th schedule must be read harmoniously and widely so as to fulfil the aspirations and needs of the tribes. It recognises the rights and prestige of individual to the Scheduled Tribes. It has essence of unity and integrity of nation and the provisions of distributive justice. The provisions of the fifth schedule should be given liberal and more extensive construction that would augment

distribution of Government land in scheduled area to the tribes. It will enhance social and financial equity guaranteed in the Preamble and Articles 38, 39 and 46 of the Constitution.

A distinguishing feature is the provision for Tribes Advisory Council (TAC) at the state level. Each state with scheduled areas should setup a TAC. It may also be established in any State having Scheduled Tribes population with no scheduled areas. A TAC consists of not more than twenty members, of which roughly three-fourth should be representatives of Scheduled Tribes in the Legislative Assembly of the State. TAC's role is to advise the State Government on matters of welfare and development of the Scheduled Tribes in the State. In reality, however, the state government either did not constitute TACs or if constituted, did not function properly. Therefore, in the seventies Indira Gandhi government introduced what is known as Tribal Sub-Plan in the planning process, earmarking a portion of funds for tribal development, but again the money seldom reached the tribals.

Article 244 (1) of the Constitution, which appears in Part X, provides that the administration of the Scheduled Areas and Scheduled Tribes in States (other than Assam, Meghalaya, Mizoram and Tripura) shall be according to the provisions of the 5th Schedule of the constitution. Clearly, "the object of the 5th Schedule and the Regulations made thereunder is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and political justice for the preservation of peace and good government in Scheduled Area. In *Samatha v. Andhra Pradesh*, (1997) 8 SCC 191., The Supreme Court ruled that all relevant clauses in the Schedule and the Regulations should be harmoniously and widely read so as to extend our Constitutional objectives and the dignity of person to the Scheduled tribes and ensuring distributive justice as an integral scheme thereof. Tribal people in Fifth Schedule area covering ten States implemented the PESA Act (though with certain exceptions and modifications) and rules made thereunder except the Odisha has not notified PESA Rules. Although PESA provides lot of opportunities for tribal people to exercise their traditional customary laws and practices, it has not been fulfilled till date. However, the PESA Act of 1996 has empowered the local village level Panchayats, particularly the Gram Sabhas in the Fifth Schedule tribal areas to act as local bodies of self-governance.

Relevancy of the Fifth Schedule

The 5th Schedule is relatively short and is highly centralised in its devolution of powers, giving extensive powers to the Governors of States, such as for limiting the application of laws of Parliament and that of making regulations for the peace and good government of any area in a State which is for the time being a scheduled area. In *Edwingson Bareh v. State of Assam*, AIR 1966 SC 1220, it was commented that the Governor was essentially the "sole legislature for the Scheduled Areas and the Scheduled Tribes", and would be competent to make laws on all subjects in the Union, State and Concurrent Lists.

Introduce ideas from the PRI setup to promote inclusive development and local self-governance. Strengthening and empowering the local self-governance, which would also include village. In this case empowering civil society bodies would contribute immensely in the monitoring

of the developmental activities and progress rate across diverse sectors undertaken by the councils. Traditional forms of governance must be promoted with self-governance since it has been observed that there is clear political failure of local governing elites. In addition, inclusion of democratic elements like gender justice and adult franchises should be built into these institutions to get a positive outcome, which will also make this platform of governance broader and capable of dealing with a changing world at both the national and international levels.

The crux of the Fifth Schedule is to protect and preserve the tribal populace. It provides distinct laws for Scheduled Areas. It confers an exceptional character for the Governor and the body of Tribes Advisory Council. The arrangements of the 5th Schedule have seen further extended through law and governance re-establishment in the form of PESA Act, 1996. Notwithstanding any special provision, tribal persons are lagging behind in the term of development and welfare of society. Therefore, efforts are made to check oppression of genuine, speechless and decent tribes. The Fifth Schedule empowers them in term of socio-economic and political upliftment to bring them into the main development of national life.

Statutory Framework of Local Self-Governance in Jharkhand

The Jharkhand Panchayat Raj Act, 2001 (hereinafter JPRA) has been enacted by the State of Jharkhand to work with “local self-governance” by means of PRIs and to give impact to the compulsory arrangements of the 73rd Constitutional (Amendment) Act, 1992 and the PESA Act, 1996. The statutory object behind the assailed arrangements of the JPRA is basically that of defending the rights of people having a place with the Scheduled Tribes class. The JPRA is enacted to safeguard the rights of persons belonging to the Scheduled Tribes. The JPRA neither offends any customary law nor socio-religious practices of tribal communities. It upholds the traditional management practices prevalent among tribal communities.

The JPRA has given adequate space to the arrangements of the PESA Act in State legislation. This Act envisages to protect the rights of tribal persons of Jharkhand. According to the provision of the JPRA, the expression “Gram Sabha” refers to a body consisting of individuals enrolled in the electoral rolls of a village. This Act in chapter II provides the provisions relating to “Gram Sabha”, including “Gram Sabha in the scheduled areas”. In *UoI v. Rakesh Kumar & Ors.*, AIR 2010 SC 3244, the SC held the proviso to Section 4 (g) of the PESA Act and Sections 21 (B), 40 (B) and 55 (B) of the JPRA are declared to be constitutional. The SC, further, said that Sections 17 (B) (2), 36 (B) (2) and 51 (B) (2) of the JPRA are constitutional provisions.

The Bhalchandra Mungekar Committee set up by the Government of India pointed out that the governance in urban centres of Scheduled Areas has no authority of law. Since, Part IX-A of the Constitution has not been extended to Scheduled area. Therefore, the Mungekar Committee had recommended to enlarge the arrangements of Part IX-A forthwith as suggested by the Bhuria Committee. The Committee (Mungekar) observed that spread of extremists’ activities in some area is due to lack of improper implementation of PESA.

The PESA Act is the first legislation which recognises the tradition and practices of the tribal persons who are residing in the 5th Schedule Areas. It provides legal sanction to the tribal self-governing system. The PESA commands that the State Panchayat Act must be enacted to secure the protection and preservation of the tribal customs and traditions. Therefore, the Jharkhand Panchayati Raj Act, 2001 is enacted, to some extent, in consonance of the arrangements of the central PESA Act. This Act allows tribal people to be the part of decision making at the local level of the village. The PESA likewise gives administration and the protection of natural assets to the Scheduled Tribes that will work on their livelihoods and salaries. It will decrease neediness and out-movement among tribal populace. The use of the PESA Act will actually take a look at illicit land estrangement and furthermore reestablish unlawfully transferred tribal land. This Act will likewise advance social legacy through conservation of customs, traditions and social personality of tribals. Now, it is the obligation and accountability of the State Government to effectively implement the PESA Act. PESA is therefore not merely a statutory framework, but the constitutional reinstatement of tribal identity, dignity and self-governance.

All the above-mentioned laws attempt to decentralise the power and functions from higher authority to local governance body. The principle of decentralisation has the essence of transforming rural India, that is, Bharat into a well-developed nation. This norm equally applies to traditionally-democratic tribal India. The tribal self-governance institutions play prime role in the all-round progress of scheduled areas and scheduled tribes of Jharkhand. Thus, the existence of traditional as well as formal local self-governance system can play a significant role in the welfare of tribes and development of these areas.

Tribal Self-Governance

The local self-governing structure like Gram Sabha is existed since the emergence of the human civilisation of this country. It can be easily traced through text and scripture of Indian history. The Panchayati Raj Institutions is the accepted name for local self-governance in India. It was developed since the ancient time to solve peoples' issues in its own self characterised manner. Traditional Panchayats may be said to be as ancient or old as the tribals themselves. It is still in existence in the tribal belt or Scheduled areas of Jharkhand. The name of local self-governance institutions in different places may be known in different names. Though, they may be known by different names of self-rule, but these institutions had the accountability to convince the local demands and aspirations of the persons residing in villages. A tribal village even at present is a unit of much cultural importance. It is one of the important units of social structure and it still enjoys a good deal of freedom. Indian Constitution recognises the significance of democratic organisations at the grass roots level in Article 40 of Part-IV of the DPSP.

The PESA and the FRA (The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006) are empowering Acts that respect the basic human right to self-governance for the tribals. The responsibility frameworks at the ground level have been jeopardised the very logic of 73rd Constitutional (Amendment) Act. To some extent the non-implementation and delayed implementation of the PESA and the FRA has pushed tribals to the

margins and that has been reflecting in the mass migrations from Jharkhand to urban cities endangering them into human trafficking. The Act if implemented properly would empower tribals economically and politically but the rampant news of land grabbing by corporate and the number of landless tribal shows that the enforcement of the Act has been a huge failure and like many laws the right remain in paper only.

Both legislations the PESA and the FRA establish the institution of tribal self-governance in the Scheduled Areas. These laws empower the tribal communities to govern themselves. These laws envisage the concept of tribal self-governance at the hamlet level in scheduled areas. Both the laws confer immense power on Gram Sabha to exercise its power on the prevalent practices and customs of the tribal persons. But the Governments are apolitical and unresponsive to implement these laws, and therefore, to a greater extent it remained on paper. The bureaucrats-corporate nexus is another reason of non-implementation of these laws. They have their individual interest to gain from tribal land.

These laws, if executed properly, might play a significant role in preventing the exploitation of tribal people. It will check eviction of tribals from forest land by the State machinery. It will help tribals to be financially empowered. The Acts also politically empowers the tribals by a provision for establishment of a Grama Sabha. The Gram Sabha acts as a body for tribal's voice. It plays significant role to reduce the exploitation of tribal people.

A Critical Study of Tribal Self-Governance

The name of local self-governance institutions in different places may be known in different names. Though, they may be known by different names of self-rule, but these institutions had the obligations to placate the local demands and needs of the persons residing in villages. A tribal village even at present is a unit of much cultural importance. It is one of the important units of social structure and it still enjoys a good deal of freedom. Indian Constitution recognises the significance of democratic organisations at the grass roots level. The traditional system of self-governance remained always antagonistic with the modern Panchayati Raj Institutions. They have sentimental attachment with the traditional governing systems. Even today, the tribes are more or less trying to retain their separate social identity, customs and regulations.

The PESA and the FRA have been enacted for ensuring tribal self-governance in scheduled areas. The Government of Jharkhand has enacted the JPRA to expedite "local self-governance" through the means of PRIs and to make effective the imperative arrangements of the 73rd Constitutional (Amendment) Act, 1992 and the PESA Act, 1996. The JPRA is enacted to safeguard the rights of persons coming from the STs communities. The JPRA neither offends any customary law nor socio-religious practices of tribal communities. It upholds the traditional management practices prevalent among tribal communities. The governance has to be done through traditional Gram Sabha for persons residing in the Fifth Schedule Areas of India. Tribal people are firm believer of the concept of "selection, no election" at village level. They give slogan as *Hamare Gaon Mein Hamara Rajya*. They want to be governed by a system of modern style with traditional essence of governance in scheduled areas of Jharkhand. They do not like intervention of outsiders in

the matters of local administration of the tribal persons in scheduled areas. Since the enactment of the Constitution of India, no law or rule is enacted to implement the arrangements of the 5th schedule. But government has enacted several contradictory laws to act contrary to the interests of the tribal people. The bureaucrats-corporate nexus is another reason of non-implementation of these laws. They have their individual interest to gain from tribal land.

Several laws have been enacted to decentralise the power and function of the State government, but the implementation of these laws has become a question mark to the public. Making laws is easier than implementing it. The power and function assigned to the Gram Sabha has still a mirage it seems but not in reality. The Gram Sabha as referred to 'Local Parliament' has minimum role to make plan and programmes at the village level. Most of the plans and programmes are imposed on the Gram Sabha by the government. There are so many instances whereby it can be said that Governments are apolitical and unresponsive to implement the protective laws, and therefore, to a greater extent it remained on paper. These laws, if executed properly, might play a significant role in preventing the exploitation of tribal people.

Conclusion

Decentralizing, governance from the national level to regions, districts; towns, municipalities, rural settlements and communities enable the people to participate more directly in the governing process. It empowers people who were excluded previously, from the decision-making process. In this way, a country can create and sustain equitable opportunities for all the people. The socio-economic and cultural life of the tribal groups of India varies from tribe-to-tribe and region-to-region. They belong to various ethnic stocks, have distinct patterns of economy, technology and religious behaviour and speak a large number of languages and dialects. Though there is diversity in their 'life style' and 'mode of life', yet there exists a great deal of similarity in their socio-cultural and psychological levels. Even today, the tribes are more or less trying to retain their separate social identity, customs and regulations.

Administration of tribal areas in India has always been a matter of concern. Each tribal community has their own traditional governance system and rule of law. People in fifth schedule areas are striving for implementation of PESA, a law that recognize their customary practices. Although, many areas in tribal central states of India are trying to experiment with the PRI system adapted to local needs. Notwithstanding that the fifth schedule are still necessary and relevant. This schedule required to be implemented with spirit and letter in order to protect and preserve the culture, language and custom of the tribal people of India. We should make efforts to end disparities in position through effective implementation of laws. We should adhere the aims and purposes of the Preamble of the Constitution. With the changing of the circumstances, we should change our attitude and behaviour with respect to the tribal people of India.

The tribal people have fear of identity loss and the perception of becoming minority due to the effect of LPG concept. It has been noticed that outsiders are coming and staying in the scheduled areas. When they protest against such move, they do not get proper justice. Because, tribal representation in higher judiciary and bureaucracy is very less. They are not equally

represented in the system of administration and their voices are not raised at the appropriate level of the system. In Jharkhand, the Manki-Munda system still alive. So, there is an urgent need to blend the statutory Panchayati Raj institutions and the traditional tribal bodies in such a way as to create a viable, harmonious and efficient system of local governance. Thus, many laws and policies have been made from time to time, but neither the administrator nor the policy makers ever understand what tribal in Jharkhand need to lead a dignified life.

References:

1. Action aid, (2016). Functioning of Autonomous Councils in 6th Schedule Areas of North Eastern States, Natural Resource Hub and Democratization Hub, Bhubneshwar.
2. Adivasis For Social and Human Rights Action v. Union of India, SC, decided on 10-05-2023.
3. Ahmad, M.S. (2004) Five Decades of Planning and Tribal Development: A study of Uttaranchal and Jharkhand, Gyan Publishing House, 1st Ed. Pp. 165-167, New Delhi.
4. Barua, S. (1999). India against Itself: Assam and the Politics of Nationally, Oxford University Press, New York.
5. Bhavanrao, P.N. (1918). Self-Government in India Vedic and Post-Vedic, National Library Kolkata, pp.165-171.
6. Biswal, G.C. (1985). Tribal Development and Education, Some Issues, Vanyajati, Vol. XXXII, No. 1, p. 14.
7. Chebrolu Leela Prasad Rao v. State of A.P, AIR ONLINE 2020 SC 488.
8. Edwingson Bareh v. State of Assam, AIR 1966 SC 1220
9. Fernandez, W. (2007). Tribal Customary and Formal Law Interface in North Eastern India: Implications for Land relations.
10. Ghurye, G.S. (1963). The Scheduled Tribes, Bombay, Popular Book Depot.
11. Jain, M.P. (2008) Indian Constitutional Law, Lexis Nexis Butterworths Wadhawa Nagpur, 1st Ed. pp. New Delhi.
12. Kumar, A. (2004). Tribal Development and Planning, Anmol Publications, 1st Ed., Vol. No. (I), pp., New Delhi.
13. Lokur, J.M.B. (Oct 24, 2013). Tribal and Customary Law, Lecture Series, Centre for Tribal and Customary Law, CUJ, Brambe.
14. Majumdar, D.N. (1958). Caste and Communication in Indian village, Asia Publishing house, Bombay
15. Monditoka, A.K. (2010). Decentralized Governance in tribal India: Negotiating Space Between the State, Community and Civil Society, Cambridge Scholars Publishing, ISBN (10): 1-4438-2065-2.
16. Orissa Mining Corporation v. Ministry of Environment and Forest and others (2013) 6 SCC 476.
17. Panda, N.K. (2006). Policies Programmes and Strategies for Tribal Development, Kalpaz Publications, pp. 33-34, Delhi.

The Fifth Schedule and Grassroots Democracy: A Critical Study of...

18. Samatha v. Andhra Pradesh, (1997) 8 SCC 191
19. Sharma, B.D. (1984). Planning for Tribal Development, New Delhi.
20. U.N. Dhebar- Report of the Scheduled Areas and Scheduled Tribes Commission (1960-61), Publications Division, Government of India, New Delhi, p. 501.
21. Union of India v. Rakesh Kumar & Ors., AIR 2010 SC 3244.

