

Assessment of Implementation of Panchayats Extension to Scheduled Area (PESA) Act in Andhra Pradesh – A Case Study of Scheduled Village in Andhra Pradesh

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Abstract

The Panchayats Extension to Scheduled Area (PESA) Act 1996 was enacted to provide self autonomy to tribals in Vth Scheduled Areas of the country. The paper examines whether the well intentioned PESA Act has created any impact on self autonomy to tribal communities. The paper highlights the constitutional framework of Scheduled V Areas and the evolution of PESA Act 1996 and its backgroud. An attempt is made to identify the gaps in compliance of other statutory State Laws with the PESA Act 1996. The paper assesses the status of implementation of PESA Act based on a field study in a Scheduled Village- Manturu of Devipatnam Mandal in East Godavari District, Andhra Pradesh.

Key words: Schedule V Areas, self autonomy, PESA Act

The total tribal population of Andhra Pradesh is 27.39 lakh, which constitutes 5.53 per cent of the total State population as per 2011 census. A.P State is traditional habitat for 19 tribal communities. Among them Chenchu, Kondareddy, Kondh, Porja, Gadaba, and Savara are specially categorized as Particularly Vulnerable Tribals Groups (PVTG). The Scheduled Areas is spread over 5 districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, and West Godavari in Andhra Pradesh.

“The tribal territories had been conquered during the colonial rule and they look forward to reversal of the process. It is not the forest right or land right that they are interested in. Their territorial rights are much more important to them. The right to self determination, autonomy and self-rule frame the core of their aspirations”¹

Background

The Central Government enacted PESA Act 1996 following the recommendations of the Bhuria Committee Report in 1996. All states with Scheduled Areas were to enact a suitable legislation within a year that are consistent and not in contradiction to PESA, the central Act. AP State brought PESA legislation in the year 1998. Further the Government of Andhra Pradesh brought PESA Rules 2011² giving an effect to the State PESA Legislation. The Government of Andhra Pradesh also notified the

¹ Roy Burman JJ. The Tribal Bill a Rejoinder, EPW, December 24, 2005 page 5514

² GO Ms No 66, PR&RD(Mdl.I)Department dated 24-03-2011

Gram Sabhas under the Rules in 2013. The same set of rules were adopted by the Government of Telangana after bifurcation of united Andhra Pradesh.

Gram Sabha is the nucleus for all development activities in the Scheduled Areas under PESA Act. PESA declares that every Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, and their cultural identity. As per the PESA Act, Gram Sabhas or Panchayats at the appropriate level shall be consulted before making the acquisition of land in the scheduled areas for development projects and before settling or rehabilitating persons affected by such projects.

The objective of the paper is to investigate whether the well intentioned legislation has created any impact on the ensured self autonomy to adivasis in the Scheduled Areas. The paper discusses the subject in three parts. The first part presents on the constitutional frame work of PESA Act and Second part is on the aspect of conformity of State PESA Act with mandated Central PESA Act 1996. The last part of the paper presents on the ground reality in implementation of PESA Act

I. PESA Act –Constitutional Frame Work

(i) Special Constitutional Governance in Fifth Scheduled Areas

Historically, a large number of areas predominantly inhabited by *adivasis* were declared as excluded/ partially excluded areas during the British period. These areas came under the purview of the Scheduled Districts Act of 1874 and the Government of India (Excluded and Partially Excluded Areas) Order 1936. Following independence, these areas as well as other areas with a significant concentration of scheduled tribes (or 'Tribals') were brought under the fifth schedule of the constitution.

Article 244 provides that the administration and control of the Scheduled Areas shall be in accordance with the Fifth Schedule. The Fifth Schedule has often been described as “a Constitution within the Constitution” for the special governance of Scheduled Areas where the populations of Scheduled Tribes are concentrated.

An important feature of the constitutional provisions under the Fifth Schedule is that the legal and institutional frame for the tribal areas is expected to be so designed as to be in consonance with the people and the institutions in these areas. It was on this count that the legislative powers at the State level are vested with the governor in respect of scheduled areas.

The purpose of Scheduled Areas, as also recognized in several judgments of the Supreme Court, such as *Samatha vs. State of Andhra Pradesh*³ is to preserve tribal autonomy, ensure social, economic and political justice and empowerment and preservation of peace and good governance in the Scheduled Areas. It is important to note that the Fifth Schedule recognizes the central role of the Governor in governance and administration of the Scheduled Areas, with the President of India holding the final responsibility of ensuring the integrity of the Scheduled Areas.

The reasons for making special provisions for the Scheduled Areas and Tribes are that as their social and other customs and their way of living are different from the rest of the country and also tribals being backward and not educated, would likely to be taken advantage of and exploited by others. Therefore, it has been felt that they should not be governed by general laws of the land and certain safeguards have to be provided to protect them from exploitation and several Acts and Regulations are passed from time to time with this purpose in mind.

(ii) Significance of Panchayats Extension to Scheduled Area Act (PESA)

The tribal communities are traditionally self-governed. These communities have unique social, cultural, economic and political systems which they have sustained over centuries. They also have their own customary laws and mechanisms of local dispute resolution. Bhuria Committee Report submitted on 17.1.1995 favoured democratic decentralization in scheduled areas.

But since planned development has been an article of faith with us, it has to be ensured that implementation of the policies and programmes drawn up in tribal interest are implemented in tribal interest. Since, by and large, the politico-bureaucratic apparatus has failed in its endeavour, powers should be devolved on the people so that they can formulate programmed which suit them and implement them for their own benefits. (Government of India, 1995) „

(iii) Constitutional Background to PESA

Under Article 40 of the Indian Constitution, the Indian state made a commitment to establish Panchayat Raj system as the basis of self-governance. The administration and control of the Scheduled Areas is under the purview of Article 244 of the Constitution. The provisions empower the Governor to make regulations for peace and good governance in the Fifth Schedule Areas.

³ All India Reporter, 1997, Page 3297

The 73rd and 74th amendments to the Constitution were not extended to the Scheduled Areas, significantly the first time ever that the Parliament did not extend a law in a routine manner to cover the Scheduled Areas. They had the clear injunctions to exclude the Fifth and Sixth Schedule areas from its purview under Article 243 M of the Constitution. The Parliament was to make separate enactments. In pursuance to this, the Ministry of Rural Development, Government of India, appointed a 22-member committee in 1994 comprising of select members of parliament and experts headed by Dilip Singh Bhuria to recommend exceptions and modifications in Part IX of the Constitution in its application to the Scheduled Areas.

The Committee submitted its report in 1995 and recommended more autonomy to gram sabhas. The gram sabha should have effective control and manage the natural resources within its jurisdiction, and land acquisition was not permissible for any development projects without its consent. The departments such as Police, Excise and Revenue should function under the control of district autonomous councils. Apart from this, the Committee also recommended for reorganization of the boundaries in the tribal areas based on ethnic and demographic considerations. Subsequently, the Central Government enacted PESA following the recommendations of the Dilip Singh Bhuria Committee Report. All states containing Scheduled Areas within them were to enact a suitable legislation within a year that are consistent and not in contradiction to PESA, the Central Act.

Thus, with the enactment of PESA, the aim of the Directive Principle of State Policy about the establishment of a virtual 'Village Republic' as envisaged in Article 40, after a long neglect, has become mandatory for Scheduled Areas, with the extension of provisions of panchayats in Part IX of the Constitution thereto with crucial changes as provided.

In the three-tier structure of panchayats, the village panchayat is at the lowest level. Article 243B states that "there shall be constituted in every state, panchayats at the village, intermediate and district levels in accordance with the provisions of this part". 'Village' has been defined to mean a village or group of villages as may be specified by the Governor by public notification (*Article 243G*). However, a specific definition to word "village" is provided under PESA Act.

(iv) Basic Features of PESA Act

The legislature of a State shall not make any law inconsistent with the basic features of the central PESA Act 1996. The "Village" shall ordinarily consist of a habitation or

a group of habitations or a hamlet or a group of hamlets. Further every such village shall have a Gram Sabha. Every Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary modes of dispute resolution. Recommendations by Gram Sabha or Panchayat are mandatory prior to grant of prospective license or mining leases. The Gram Sabhas or Panchayats at the appropriate level shall be consulted before making acquisition of land in the Scheduled Areas for development projects and before settling or rehabilitating persons affected by such projects. The 'Panchayats at the appropriate level and the Gram Sabha' to exercise control over institutions and functionaries in all social sectors. As political empowerment is the beginning of economic development, there is a reservation of a minimum of 50 percent of the seats for the members of the tribal communities and also all posts of chairpersons in the Scheduled Areas for tribals. The Gram sabha is empowered to approve plans, programmes and projects, issue utilization certificates, select beneficiaries for poverty alleviation and other programmes. The Gram Sabha is empowered to prevent alienation of tribal land and to order for the restoration of the alienated tribal lands. The Gram Sabha is empowered to manage the community resources and has been vested with the ownership of minor forest produce. PESA also empowers the Gram Sabha to have control over sale and consumption of intoxicants, to exercise control over money lending to Schedule Tribes, to manage village markets and to manage minor water bodies.

(v) Tribal self rule - Role of gram sabha

As tribal societies are mostly homogeneous and monolithic, a participatory democracy constitutionally provided through Gram Sabhas is very appropriate for them. Keeping this in view, the Bhuria Committee has recommended to make Gram Sabhas the fulcrum of the entire scheme of decentralized governance, planning and development in tribal areas (Mahipal, 2006).

It may be pertinent to note that the Bhuria Committee recommended self-autonomy to *adivasis*, by adopting the broad frame-design of autonomous district councils contained in the Sixth Schedule of the Constitution. Further, provisions of the landmark legislation "Panchayats Extension to the Scheduled Areas (PESA) Act 1996" also direct the State Government to create tribal autonomous councils empowering them for self-rule in the Scheduled Areas.

But what constitutes 'self-government' has not been stated anywhere. In Articles 243G and 243W, this term has again been used. The 'legislature of a state' is

required to endow these bodies "with such powers and authority" as may be necessary to enable them to 'function' as "institutions of self-government". Such law may contain 'provisions' for "devolution of powers and responsibilities" subject to 'such conditions as may be specified therein' for 'the preparation of plans for economic development and social justice' and 'for the implementation of schemes of economic development and social justice as may be entrusted to them' including those which exists in the Eleventh and Twelfth schedules. In the case of municipalities, the 'performance of functions' has been added to what has been stated in regard to the implementation of schemes. The state legislature is thus the sole determinant of what constitutes 'self-government'. But here too, further riders have restricted the powers of the state legislatures. The state legislations have not established any institutions of self-government not even in the limited sphere as indicated under Articles 243G and W of the Constitution. Some modifications of state legislations have been done after the 73rd and 74th amendments to give effect to the mandatory provisions of the Constitution (Srivasthava, 2002).

(vi) Important debates relating to implementation of PESA in the States

The Schedule V areas to which PESA extends are characterized by a high degree of poverty, lack of infrastructure, illiteracy, exploitation and marginalization. Of 94 PESA districts, 32 are also Extremist Affected Districts (EADs) of 76 EADs, 32 are PESA districts of the 33 Most Extremist Affected Districts and 16 are PESA districts. The major causes of extremism in these areas are indifference to the needs of the people in governance, distress caused by land alienation and displacement (loss of land, livelihood, collective identity, and culture) and lack of control over local resources. People-centric governance and people centric planning & implementation in these areas is essential for containing left wing extremism, and can be brought about through the implementation of PESA in letter and spirit. This point has been emphasized in the Seventh Report of the Second Administrative Reforms Commission, 'Capacity Building for Conflict Resolution' (Planning Commission, 2008).

The Expert Committee (Ministry of Panchayat Raj, 2013) recommends that in view of the 12th plan assessment that "PESA has been very poorly implemented across the nine States, the Union Government take recourse to the Fifth Schedule to ensure the implementation of PESA in letter and spirit, as the Prime Minister has desired, by either invoking paragraph 3 of the Fifth Schedule or having the necessary directions issued under paragraph 5 by the Governor.

Even in the most peaceful of times the state has often failed to uphold the law in tribal areas. Schedules V and VI of the Constitution provide for a substantial degree of self-governance in the districts where *adivasis* are in a majority. Yet, their clauses protecting tribal rights in land and forests, curbing the activities of moneylenders, and mandating the formation of village and district councils have been honored only in the breach. These schedules provide for local councils to share in the royalties from minerals found on tribal land; what happens in practice is that the *adivasis* do not get to see or spend a paisa from mining, whose proceeds are shared between the contractors and the state-level (and usually non-tribal) politicians (Guha, 2007).

The Ministry of Panchayati Raj⁴ directed all the PESA States to take steps for the effective implementation of PESA Act 1996. The directions including, adoption of Model PESA Rules circulated by MoPR; amendment to the State PESAs in consonance with central PESA, and also related laws, rules and executive instructions on Mines, MFP; Excise, Money Lending etc.

The National Advisory Council also recommended for the constitution of gram sabha at the hamlet level and power to constitute committees; Mandating 'prior informed consent' as a pre requisite for land acquisition and licensing for minor minerals; Reinforcing the need to align Central and State laws in conformity with PESA; enabling the state government to make rules⁵.

In this backdrop an attempt is made to verify whether the State Governments have effectively followed the directions of MoPR to facilitate local governance in the Scheduled Areas as per the provisions of PESA Act.

The key amendments proposed by MoPR to PESA 1996 were that "consultation" referred in PESA law should mean a mandatory consultation and "Panchayat at appropriate level" means lowest tier of PRI, procedure for notifying a village, protection to migrant tribals etc.

States are indulging in the exploitation of mineral resources, and are taking up several projects in the resource rich tribal areas. The decision of gram sabha shall have a bearing on the policy of States in relation to exploitation of mineral wealth and other resources in Schedule V Areas. Usually higher level Panchayat raj Institutions are headed by elected representatives. The elections to these higher Panchayat raj

⁴Ministry of Panchayat Raj (GoI) Letter No. N-11012/1/2007-PESA (Pt), dated 26th, May 2010.

⁵ Recommendations of National Advisory Council (NAC) on Panchayat (Extension to the Scheduled Areas) Act, 1996, Govt of India. Can be accessed at: <http://fra.org.in/document/NAC%20Recommendation%20on%20PESA,%201996.pdf>

bodies are political and party based. If key powers are given to higher level bodies, that would be easy to ruling political parties to manage the decisions of PRIs with its political clout and influence over such bodies. Whereas gram sabha is a non political entity under the constitutional framework of PESA Act. If key powers are given to gram sabha it would be difficult for the Governments to manage the decisions of the gram sabha. Usually the external influences would be minimal at the functioning of gram sabha. Thus the States are unwilling to assign powers to gram sabha in key subjects under PESA Act.

II. Non-compliance of Central PESA Act: Key concerns

The central Act PESA was made in 1996 followed by State Act in 1998 and Rules in February, 2011. But some of the provisions of the State PESA Act 1998 are not in conformity with the provisions of Central PESA Act 1996, similarly PESA State Rules 2011 are not in consonance with the provisions of the State PESA Act. Therefore, changes are to be made in both the State Act 98 as well as recently made Rules 2011 to achieve the envisaged objectives of the PESA Act 1996.

The non conformity of the state laws to the PESA Act fell for consideration before Bombay High Court (Vikram Singh vs the State of Maharashtra, 2008) which held that Sections 12(2)(b) and 58 (1-B) (b) of ZPPS Act are in conflict with first proviso to Section 4(g) of PESA. Similarly, Second proviso to each of the Sections 42(4)(a) and 67(5)(a) of ZPPS Act are in conflict with the second proviso to Section 4(g) of PESA. Proviso to Rule 4 (2) of 1996 Rules is also in conflict with first proviso to Section 4(g) of PESA. Hence, it is desirable for Law Departments of State and the Union to have a dialogue to remove the discrepancy. State Election Commission cannot deny responsibility of implementation of PESA in the field.

(i) AP State PESA and Rules are not in conformity with the Central PESA

The provisions of State PESA are not in conformity with Central PESA. The PESA Rules further weaken the spirit of the Central Legislation in some aspects. Therefore there is a need to bring adequate changes to the present State Legislations. The conflicting areas are as follows.

(ii) Access/ownership/control over Minor Forest Produce

PESA endows power over ownership of minor forest produce to the gram sabha along with *Panchayat* at appropriate level. Most of the states are not in conformity with the provision of Central PESA. There are currently extensive state legislations and administrative rules governing the NTFP and their marketing involving state

monopolies for many products and transit rules. For example the monopolisation of non-timber forest products (NTFP) and marketing by the Girijan Co-operative Corporation (GCC) which is a sole agent under the A. P. Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979. This monopoly right continues despite the provisions of A P PESA in force, which empowers Gram Sabha to ownership and control of Minor Forest Produce as well as the subsequent Forest Rights Act 2006 which further reinforces this provision in detail. The PESA Rule 2011 empowers the GCC to continue the monopoly power of Girijan Cooperative Corporation under the A. P. Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979 for procurement of Minor forest Produce on contrary to the PESA law.

These administrative structures have been very obstructive to tribals in securing their rights and to the implementation of self rule law. Thus, there is a need to harmonize the various legislations and government policies being implemented in tribal areas with the provisions of PESA. The laws that require harmonization are the Indian Forest Act, 1927, the Forest Conservation Act, 1980, Wild Life Protection Act, MFP Trading Regulations etc. Similarly, the State and Central Subject Laws relating to Mines and Minerals, Forests, Excise, Land Acquisition etc. are not PESA compliant. In spite of the efforts by MoPR, requisite action has not been taken. Formulation of some sections of the PESA have been interpreted against the spirit of the Act⁶

Thus, the State Governments have to take steps for effective implementation of PESA Act by bringing necessary legislative changes to the existing conflicting provisions under other statutory laws as well as Rules.

(iii) Issues pertaining to the distribution of powers - Gram Sabha vs. State

The competency of the gram Sabha, as the basic institution of decentralized governance, is well recognized under PESA Act. . The legislative empowerment of the gram sabha in India is a political development of utmost importance, because it marks the clearest break from the most dominant political orthodoxy of the 20th century (Mander, 1999).

Though, the Govt. of Andhra Pradesh has brought Rules in 2011 adopting the definition of gram sabha under PESA Act 1996, in practice the constitution of gram sabhas is not according to the definition. For example, a Gram Panchayat, 'Pullangi'

⁶Ministry of Panchayat raj, Govt. of India, D.O. No. N-J IOI2/3/2010-PESA

in Maredumilli Mandal, of Andhra Pradesh, consisting of 11 habitations with around 1050 voters, was notified as a single gram sabha.

National Institute of Rural Development (NIRD) study on the impact of PESA Acts on the empowerment of gram sabha in Schedule V Areas observed that “the various provisions of the central PESA empower the gram sabha, but such empowerment is found to be limited (Singh, 2005)”.

It may be mentioned here that gram sabhas have been held responsible at the Panchayat level for the determination of forest rights of tribals and other forest dwellers instead of at the hamlet or habitation level as contemplated under The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 for Scheduled Areas. This is a gross violation of the Forest Rights Act. The administrative ‘village’ under the AP Panchayat Raj Act at the Gram Panchayat level was adopted for the purpose of implementing the Forest Rights Act. (Reddy et al., 2010).

The definition of ‘village’ in PESA is in terms of its natural community-centric character. The PESA authorises gram sabha to restore all unlawfully alienated land to the rightful owners. However, in none of the States the original jurisdiction of gram sabha under PESA to exercise this important power has been conferred on them. (Planning Commission, 2008).

As the successful operationalisation of PESA hinges on adopting the operational definitions of Gram Sabha and Village, it is necessary that the identification of the ‘village’ and delineation of its geographical limits is done in conformity with PESA. This would enable it to function as envisaged under the law. The neglect of this effectively precludes the functioning of a ‘face to face’ community as imagined under PESA and eliminates the likelihood of the functioning of gram sabha, which could shoulder the responsibilities of a unit of self-governance (Ministry of Panchayat Raj, 2013).

PESA declares that every Gram Sabha is competent to safeguard and preserve the traditions and customs of the people, their cultural identity. But AP PESA contradicts this by saying that the functions of Gram Sabha shall be subject to other laws in force as under 242C(1) of the State Act “without detriment to any law for the time being in force”. The PESA Rules are also silent in operationalization of this provision.

PESA insists recommendations by Gram Sabha or Panchayat prior to grant of prospective license or mining leases. The State law violates this provision and does

away with these provisions entirely by addition of '*made in such manner as may be prescribed...shall be taken into consideration prior to*' the grant of leases or licenses. In effect, the AP PESA requires that such recommendation to be only '*considered*' and not mandatory for grant of concession for the exploitation of minor minerals by auction. But in practice the Mining Department grants leases, licenses and also conducting auctions for excavation and transport of minor minerals from the Scheduled Areas without any reference to the concerned Gram Sabhas and Gram Panchayats. PESA requires that both the Gram Sabhas *and* the Gram Panchayats shall be "endowed" with such powers to function as self government. But AP PESA provides an either or option between Gram Panchayat and Gram Sabha and that too '*as may be prescribed*'. There is no such option in PESA.

The PESA says that the Gram Sabha must be consulted before taking up of land acquisition in Fifth Schedule Areas. But the word 'consult' does not mean consent as per the legal interpretations. It is unclear if the Gram Sabha doesn't accord its approval to land acquisition project, what would be the sanctity of such resolution of the Gram Sabha? However, the power to give consultation is given to higher level body Mandal Praja Parishad instead of Gram Sabha in Andhra Pradesh PESA Act in relation to land acquisition and rehabilitation matters.

"The Polavaram project should in fact have been a test case for the constitutional law of self-governance in the scheduled areas: While nine mandals will be affected, all of them in the Scheduled Areas, and the mandal Praja parishad (the middle tier of the panchayat system) is the "Panchayat at the appropriate level" that has to be consulted for land acquisition and rehabilitation, not a single one of the nine has been consulted. But the work on the project is proceeding apace, notwithstanding serious opposition from the adivasis (K. Bala Gopal (2007). The union of India issued orders to describe the modalities of consultation with the gram sabha or panchayats and the procedure to be followed for acquisition of the land in the Vth scheduled areas. No such procedure is followed in the case of Polavaram Project in Andhra Pradesh (Palla Trinadha Rao 2006). Even the word 'consultation' used in the State PESA law does not mean that participation of all the incumbents by deliberations is necessary in the absence of any specific procedure laid down for the same, observed by the High court of Andhra Pradesh in Writ Appeal No 678 of 2009.

While PESA stipulates benefiting the consultation process for the 'persons affected' by projects also for purpose of rehabilitation, the A P PESA provides only for the

'person evicted' leaving out other categories of affected persons such as the landless, those dependent on the natural resources for livelihood, workers etc.

(iv) Approval of Socio economic programs

PESA stipulates that Gram Sabha is the approval authority for the socio-economic plans, programs and projects. The State diabolically created parallel structures to the Panchayat Raj bodies to delimit the role of local bodies with an intention to safeguard its imperialist frame. The Government created parallel structures such as the Village Tribal Development Authorities (VTDAs) to counter the Gram Sabhas under Panchayat Raj Act. Similarly many committees like Water Users Association, Educational Committees, Vana Samrakshana Samithis (VSS) under World Bank assisted Forestry Projects, Village Organisations (VO) under Ministry of Rural Development etc are in operation which negate and violate the powers of Panchayat Raj Bodies in order to illegally perpetuate the bureaucratic control of the Government.

(v) Reservations

Reservations of seats in PESA are in proportion to the population of communities for whom reservation is sought. AP PESA while providing for reservation at gram panchayats and mandal parishads in the scheduled areas, the district level body has been left out. Similarly, the post of chairperson of panchayats at all levels is to be reserved for the Scheduled Tribes, but in the State law seats have been reserved for the Sarpanches of the Gram Panchayats and the president of the Mandal Parishads only. The de-reserving of the posts of ward members of Gram Panchayat and Territorial Constituency members at both Mandal and District level for the Scheduled Tribes in the Scheduled Areas pose a serious threat to the envisaged objective Tribal self rule. The enforcement of the general laws in the Scheduled Areas has virtually eclipsed the rights of adivasis.

(vi) Control over institutions

PESA endows 'Panchayats at the appropriate level and the Gram Sabha' to exercise control over institutions and functionaries in all social sectors. But the AP PESA denies this to the Gram Sabha and restricts the power to Mandal Parishad and that too 'in such manner and to such extent as may be prescribed' which provides ample room for the bureaucracy and the government to manipulate and coerce.

On the whole, the AP PESA has endowed the Mandal Parishad with more powers whereas PESA lays down a more vigorous and predominant role to the gram sabha. The emphasis on the grassroots unit of Gram Sabha as a competent forum for

participatory democracy and community control of resources will definitely promote common good for the tribal society in general. Nevertheless, it all depends upon how the good intentions are translated into positive action 4 (S. K. Singh 1997).

Finally, PESA stipulates that the 'state legislature shall endeavour' to follow VI Schedule pattern, the AP PESA does not attempt to do so. The AP PESA has simply been inserted into the State Panchayat Raj Act and in subordination to the general Panchayat raj structures with various prescriptions to ensure that it is the Mandal Parishad which is, in effect, endowed and that too restrictively/partially and subject to the whims and fancies of the government. The Gram Sabha is made nominal and invisible. Therefore it follows that all mention of Gram Panchayat and Mandal Parishad in its entirety in the AP PESA is inconsistent to and are in violation to the letter and spirit of PESA.

"The result has been that despite PESA being in force for more than 15 years, tribal people continue to be deprived of their rights including their right to self-governance as recognised in PESA, and from their life sustaining natural resources in the Fifth Schedule Areas. Dislocation of the communities and their disaffection and distrust of the government has further increased." (Ministry of Panchayat Raj, 2010).

The only, practical remedy under the Constitution is to bring the scheduled areas in Andhra Pradesh under the sixth Schedule and form an autonomous administrative unit with autonomous district councils and regional councils. Thereby the tribals could have more freedom to shape their own lives. (Subbareddy (2006).

Thus it is very clear that the provisions of the State PESA are not in conformity with the Central PESA Act 1996. And even rules brought by Andhra Pradesh are against the letter and spirit of the provision of central legislation in relation to empowering Gram Sabha or Gram Panchayat as the case may be over minor forest produce. Thus, the State has to bring changes to its legislations to be in conformity with the central PESA Act 1996. The PESA Act has remained virtually a non starter although gram sabhas were notified in the year 2013.

III A case study: Mantutu, a Scheduled Village

The total mandals covered by AP PESA Act are 36 of the total 660 in the State of A.P, covering 588 GPs including recently merged 87 GPs of khammam district after bifurcation of the united Andhra Pradesh under AP Reorganization Act 2014.

The purposive case study of Manturu village, in Scheduled Mandal-Devipatnam Mandal of East Godavari District further helps to understand the status of

implementation of PESA Act in Andhra Pradesh. FGD was conducted to know about the status of implementation of PESA Act in Manturu Village and also interacted with key resource persons in the village including the heads of Gram Sabha.

The tribal area of the District is inhabited by 2.36 lakh scheduled tribe population spread over 15 Mandals including four sub plan Mandals in the East Godavari District. The Integrated Tribal Development Agency (ITDA) with its head quarter located at Rampachodavaram covers total 741 villages. The Scheduled Area of the district is spread over 11 Mandals and ST population is 220245 (66.68%) of the total population 330281.

(i) Profile of the Study Village Manturu

The total households are 14521 in Devipatnam Mandal, covering 53031 Population as per 2011 census (Male: 25533; Female: 27498). Of total Population the ST Population is 16198 and remaining covered under Other Population. Thus the non tribals constitute 35.41 percent while ST is 64.59 percent. Manturu is one of the Schedule Villages in Devipatnam Mandal. Manturu Gram Panchayat comprises of Madipalli and Penikalapadu hamlets. Total households are 489 in Manturu village with total population 1290, Of total Scheduled Tribe population is 1030, while the rest of the population is non tribals. The total 0-6 population is 141. Total literates are 707 and illiterates 583. The number of illiterates are more in number with 407 compared with men 176. The total work population is 892, of them female workers are 494.

Except health sub centre and primary school no other institutions are located in the village. All the important government institutions are located at a distance of minimum 9 km at Mandal head quarter Devipatnam.

(ii) Sources of Livelihood- Agriculture and land conflicts

Agriculture is the major source of livelihood for tribals. All the ST households depend on podu cultivation as well as settled cultivation plots. Mahatma Gandhi National Rural Employment Guarantee Act (MGNREA) ensures wage employment for the tribals without any restriction on the maximum number of days. However, tribals are hardly getting 100 days wage employment in a calendar year. The wage seekers are able to get Rs 100 an average wage per day. Due to lack of employment, tribals are compelled to migrate outside the district and state. Tribals used to borrow money for agriculture purposes on payment of Rs. 3 per cent interest per month. The money lenders give loans only for commercial crops to tribal farmers. Tribal farmers have to depend on private

money lenders since most of the tribals do not have land deeds/ pattas over their cultivated plots in the village to be eligible for bank loans.

Non tribals started entering the village during the post independence era. Two or three non tribals came to the village as forest contractors and grabbed the tribal lands in the year 1949. Subsequently some of the non tribal families started coming to the village in the name of arrack business. A huge land struggle triggered in the year 1968-69 under the leadership of CPI ML party against the non tribals' cultivations. The land struggle helped tribals to regain the lands lost to non tribals. The left wing party distributed lands of one to one and half acres each to 50 Konda Reddi tribal households covering an extent of 165 acres. Now the number of original 50 tribal households increased to 85. The lands are still under the possession and enjoyment of tribal families. However, the tribal families are not having any Ryotwari Settlement Patta or land deeds over the lands held by them to show their ownership. The ownership of the lands is still with the non tribals. But tribals have been in continuous possession and enjoyment of land for last 46 years.

The Land Acquisition Officers under Polavaram Project are paying land compensation for acquisition of lands in this village to non tribals although the lands have been in physical possession of tribals for more than four decades. The actions of Land Acquisition Officers are depriving tribals to get either land to land or monetary compensation for the lands slipping from their hands. Only 4 tribal families have settlement pattas in this village. Tribals also have podu lands to an extent of 35 acres in the village. Cashew and few mango species are found in the podu fields. The average size of land holding among the tribals is 2 to 4 acres.

(iii) Forest Lands

Due to lack of awareness tribals failed adequately to file claims seeking both individual and community forest land rights under the Forest Rights Recognition Act 2006. Some of the tribals filed claims but were rejected saying that the claimed land is out of the reserved forest.

As per the report by March 2015, about 15 individual claims were rejected covering an extent of 30.07 acres of forest land. However, the government granted 27 title deeds in favor of VSS over the land an extent of 758.29 acres instead of community/ Gram Sabha. The Ministry of Tribal Affairs already considered granting pattas to VSS in the name of community rights as illegal and

directed the authorities to withdraw the titles granted to them. Thus the ensured Act has not provided any benefit to tribals in the village.⁷

(iv) Status of Implementation of PESA Act

With regard to the implementation of PESA Act a Gram Sabha was notified for Manturu GP under PESA Rules. Vice President- Chedala Veerapureddy and Secretary-M. Prasad were elected for conducting the official business of Gram Sabha. But no single meeting was conducted by them due to lack of awareness and facilitation to run the business.

Customary Mode Dispute Resolutions

The PESA Act empowers Gram Sabha to resolve traditional disputes through customary mode of dispute resolution. However, in the village there is a local forum to resolve disputes traditionally in the village but not Gram Sabha. This is nothing to do with the Gram Sabha notified under PESA Act which is empowered to resolve the disputes through customary mode of dispute resolution.

Socio, Economic Schemes

An approval from the Gram Sabha is required for identification of beneficiaries as well as selection of them for the implementation of poverty alleviation programs. Government departments should also seek an approval from the Gram Sabha for the implementation of socio, economic programs under the PESA. On contrary the field staff of government institutions or groups formed by the departments are involved in deciding the identification of beneficiaries under the schemes.

Land Acquisition Matters

Before taking up of land acquisition the authorities concerned should consult the Mandal Praja Parishad as per the provisions of PESA State law, and Gram Sabha in the case of Central Law. However, the land acquisition authorities who are acquiring the land for the purpose of Polavaram Project in the village are not consulting either the Gram Sabha or Mandal Praja Parishad. Thus the land acquisition authorities are violating the provision of PESA Law.

The operation of Gram Sabha has virtually remained as non functional in the village. There is no difference in the situation before or after the commencement of the PESA Act. The provisions in relation to the role of Gram Sabha in relation to the implementation of Forest Rights Recognition Act are not in operation.

⁷ MoTA,GoI Circular No 23011/11/2013/FRA Circular 2013

Conclusion:

The results of the Study shows that the AP State PESA Act 1998 and Rules 2011 made there under are not in conformity with the Central PESA 1996 which mandates the States having Schedule V Areas should bring legislation not in contradiction and within the frame work of Central PESA Act. Thus the State has failed to bring legislation in consonance with the provisions of Central PESA. The field study in Scheduled Village-Manturu further shows that even the implementation of State PESA has remained as non starter even after nearly two decades have passed.

Recommendations

1. Legal awareness among all the primary stakeholders must be provided for effective functioning of the Gram Sabha. The role of women must be ensured in the decision making process at Gram Sabha.
2. Notification issued for Gram Sabha should be revisited for re notification of Gram Sabhas as per the definition of 'Village' under PESA Act and letter and spirit of the law.
3. Amendments to be made to the existing AP PESA Act 1998 in conformity with the provisions of Central Law. Similarly Rules are also to be amended in consonance with the provisions of Central PESA Law.
4. The role of Gram Sabha should be ensured in the local governance as per the provisions of the PESA Law without any executive interference and existing functional bodies of the State departments should be made accountable to the Gram Sabha. All these bodies should function by providing an additional value to the decision making process of Gram Sabha and its role and without any action detrimental to the powers and functions assigned to the Gram Sabha. Executive decisions at Mandal or ITDA level in relation to the subjects mentioned in the PESA provisions shall be in concurrence with the decision of Gram Sabha.
5. There must be a written circular from the Government that all the departments should scrupulously follow the provisions of PESA Act without any deviations. The budget for any program shall be released based on an express statement of the head of the institution that in compliance of the provisions of PESA Act was attended.

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