

INTERFACE OF TRIBAL SELF-GOVERNANCE INSTITUTIONS AND STATUTORY PANCHAYATS: A STUDY IN THE SCHEDULED AREAS OF ANDHRA PRADESH

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Abstract

All the tribal communities in India not only possess rich cultural heritage, they have evolved unique traditional systems of social control. The traditional institutions exercise enormous social, moral, religious, economic and political control over these communities. Most of these communities preserved their own distinct cultural identities through their unwritten code of conduct and distinct traditional mechanisms to enforce the codes. The customary laws of the tribes encompassed all spheres of their activity and jurisdiction of the traditional council was all pervasive before introduction of statutory Panchayati Raj (PR) system in tribal areas. In this backdrop, the paper examines the functioning of the traditional tribal self-governing institutions in relation to statutory panchayats in two tribal villages (scheduled villages) of Andhra Pradesh. It tries to throw light on the institutional arrangements and functioning of these institutions, the leadership pattern and interface of these institutions with the PRIs in these villages. It reveals that these institutions form an important aspect of the village self-governance system despite the presence of the Panchayats.

Introduction

According to the 2011 census, the tribal people number around 104.3 million, accounting for 8.6 per cent of India's total population (Census 2011). There are nearly 700 state-specific Scheduled Tribes (STs) scattered all over the country, except Punjab, Haryana, Delhi and the Union Territories (UTs) of Pondicherry and Chandigarh. Each tribe is quite distinct from the other with, usually, separate languages and dialects, customs, cultural practices and lifestyles. Despite this diversity, tribal communities do have similarities, though broad generic ones. They are known to dwell in compact areas, follow a community way of living, in harmony with nature, and have a uniqueness of culture, distinctive customs, traditions and beliefs which are simple, direct and non-acquisitive by nature. Some of these broadly similar characteristics have been used as the criteria for the last few decades to identify and declare a particular community as a Scheduled Tribe (Ratho 2007).

Traditional Tribal Panchayats as Social Control Mechanisms

All the tribal communities not only possess rich cultural heritage, they have evolved unique traditional systems of social control. The traditional institutions exercise enormous social, moral, religious, economic and political control over these communities. Most of these communities preserved their own distinct cultural identities through their unwritten code of conduct and distinct traditional mechanisms to enforce the codes. The customary laws of the tribes encompassed all spheres of their activity and jurisdiction of the traditional council was all pervasive before introduction of statutory Panchayati Raj (PR) system in tribal areas. The customary laws are based on their mythologies, beliefs, values, traditions, perceptions of the universe and their transmitted social and cultural heritage.

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The customary codes or social codes are *sine qua non* for solidarity, prosperity and growth of each community as well as individuals. In the absence of this mechanism of control of human behaviour there would be utter chaos in the society. The traditional village and inter village councils enforce these unwritten codes among the tribal communities in order to maintain harmonious relations not only among different segments of the society but also regulate inter personal relations (Rao 2000). Studies also suggest that many tribal communities still live with the local institutions of their own that facilitate, support, regulate and control the lives of people in many ways. These traditional institutions have been a product of a system developed by the tribals evolved and modified in a natural evolution process through ages. The system combines political affairs with social, religious and economic affairs including management and ownership of resources.

Contrary to general impression, tribal customary laws and the institutions connected with them survive, even flourish. This is mainly because the tribal communities have shown considerable resilience in 'adapting their institutions and their laws to the challenges they face (Singh, 2000).

The traditional councils are informal and mostly caste-based governance institutions. They are quite powerful in terms of internal cohesion and jurisdiction. The leadership coexists with the statutory Panchayats, but since Panchayat usually covers more than one village, authority in each tribal village is vested in the traditional tribal leaders. Hence, it is argued that the introduction of formal Panchayats through 73rd Constitution Amendment Act (CAA) and subsequent extension of Panchayats to tribal dominated Scheduled Areas did not affect the functioning of the traditional village councils of the tribals in any significant manner.

The traditional councils are known with different nomenclatures in different parts of the tribal areas. Among Gonds of Adilabad of Andhra Pradesh it is known as '*Rai Sabha*' and among tribal communities of Visakhapatnam district of Andhra Pradesh it is known as '*Panch bai*' or '*Borobai*', '*Beromanosam*' among Yerukulas, '*Nanger*' among Lambadas, and '*Kula Panchayat*' among other tribal groups. The composition of the traditional village or inter village councils may vary but their functions are more or less identical. The village *KulaPanchayat* is a closely knit group like own brothers (Rao, 2000).

The 73rd CAA is the first Act in which decision was taken in advance not to cover the Scheduled Areas as a matter of routine and extend the same with suitable exceptions and modifications. This was done in view of the fact that in many tribal areas the traditional system of governance was in vogue. Therefore, superimposition of a new formal structure of Panchayats unmindful of the living traditional system, would have necessarily led to accentuation of the confrontation between the people and the State (Gol 2006).

Traditional Panchayats and PESA Act

The Constitution (73rd Amendment) Act, 1992 purports to decentralize to Panchayats such powers and authority as may be necessary to enable them to function as institutions of self-government. It is noteworthy that the Article 243M exempts from application of its provisions the following:

- i. The hill areas of the district of Darjeeling in the State of West Bengal for which Darjeeling Gorkha Hill Council exists;

- ii. The States of Nagaland, Meghalaya and Mizoram each of whose legislature may extend the provisions to the State concerned barring the Scheduled Areas of Article 244(1) and tribal areas of Article 244(2);
- iii. The hill areas in the State of Manipur for which district councils exist under any law for the time being in force;
- iv. The Scheduled Areas of Article 244(1) notified as per the Fifth Schedule and tribal areas of Article 244(2) notified as per the Sixth Schedule.

It has to be appreciated that the bulk of tribal population lives in Scheduled Areas and tribal areas referred to in category (iv) above. In so far as these areas are concerned, Article 243 M makes the provision that Parliament may, by law, extend to them the provisions of the Act subject to such exceptions and modifications as may be specified in the law and such law shall not be deemed an amendment of the Constitution under Article 368 (laying down the procedure for Amendment). This shows clearly that the Scheduled Areas, the tribal areas and the other three category areas indicated above have been treated on a different footing as compared to the rest of the country (Singh, 1995).

A Committee of Members of Parliament and Experts headed by Dileep Singh Bhuria was constituted by Government of India (Gol, 1995) to suggest steps for harmonization and modifications required to strengthen institutions of local Government in Fifth Schedule Areas. The Committee submitted its report recommending formal structure and expected role of Gram Sabha (GS) in all matters concerning day-to-day life of the tribal people including command over natural resources, resolution of disputes amongst its members etc. In the light of Committee's report the Gol passed legislation namely Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA), in order to extend provisions of 73rd amendment to Panchayati Raj Institutions (PRIs) in the Scheduled Areas.

The PESA, 1996 also known as Central PESA act is the most important legislation enacted by the Parliament of India for the political empowerment of tribals in the country. The Act extends the PR system to all Schedule V areas falling within the administrative jurisdiction of states of undivided Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Odisha and Rajasthan. The primary objective of PESA is to percolate the ethos of democracy to the tribal areas by decentralizing power at the grass roots level so that *Adivasis* can participate in decision-making at the Village, Block and District levels.

Emphasizing the distinctiveness of tribal councils the Bhuria Committee observed that "It is to be recognized that many tribal communities are face to face communities and they have been regulating their politico-social legal affairs on the basis of principles, procedures, practices, norms, conventions, traditions, precedents etc., as a result of indigenous growth over decades and as such they find the modern formal systems difficult for understanding and operation. For example, the choice of leadership among them has been based on informal consensus or selection by the people of the village or the region. Decision-making also has been through consensus rather than by count of votes. These indicate that the traditional practices, processes and procedures of tribal communities have been different from those cast in formal moulds of the present day systems. It is desirable that the traditional arrangements should not be disturbed. Traditional systems of the GS should be accepted. In other words, nothing should be imposed from above on the GS, which

runs counter to the established traditional order, customs, conventions etc.," (Gol, 1995).

The Committee also observed that in some tribal areas, traditionally village council has been constituted and at the inter-village level regional councils have been constituted. Both at the village and at the regional level, traditional organizations have been conducting socio-political, economic and judicial affairs.

Dealing with the background to enactment of PESA, the Mungekar Committee further observed that the Directive Principles of State Policy (Article 40 of the Constitution) envisaged organisation of 'Village Panchayats' as virtual 'Village Republics' through 'PanchayatiRaj'. However, it was forgotten by the administrators and law makers that the tribal people had a strong functioning system of self-governance. This was so notwithstanding its non-recognition under the formal system. This omission has had adverse and disastrous consequences. The community was greatly handicapped in facing the new situation that had resulted in serious unrest throughout tribal India. The idea of 'Panchayati Raj' was resurrected in 1980s in search of an alternative for the dysfunctional politico-administrative system that has been incessantly running down. In the debate that followed about the structure of PR it was realised that any attempt to superimpose a formal system of Panchayats on tribals would lead to further accentuation of the confrontation. Accordingly a historic decision was taken by the Gol in 1996 not to extend the general scheme of Panchayats to the Scheduled Areas (Behera, 2011).

Before explaining the broad schema of PESA, it needs to be understood that the Fifth Schedule of the Constitution provides the basic frame for administration of the Scheduled Areas. But the canvass of administration in PESA is inclusive and comprehensive. As already mentioned, PESA brings the community in the form of GS at the centre of governance at the village level. GS comprises the people themselves where all other institutions are representative bodies. The scheme of PESA, however, is at variance with Article 243(A), which envisages 'endowment' of powers, as may be necessary, on the GS. But, any representative body including the Parliament cannot endow powers on GS in a Scheduled Area since it is a self-created and self-empowered entity. The PESA corrects this gross anomaly of the Indian Constitution. That is the reason PESA acknowledges the 'competence' of a GS to manage all their affairs, including community resources and dispute resolution, in accordance with their customs and traditions. The frame of governance of the Panchayats including GS as envisaged for the tribal areas in PESA is comprehensive. It covers all aspects of people's life including the matters concerning intoxicants, prevention of alienation of land and restoration of illegally alienated lands, consultation before acquisition of land, grant of mining leases and concessions, control over money lending, regulation of village markets, management of water bodies, ownership of minor forest produce, developmental programmes and social services. Moreover, the GS remains at the centre stage in the system of tribal self-governance.

Tribal Self-Rule is a powerful weapon to safeguard their interests, their lives, their dignity, their rights and their natural right to rule themselves. History of tribals is full of chronological description of the struggles of the tribals for self-determination, self-actualization and self-rule. The tribal self-rule or local governance by the tribals or the village republic of the tribals would ensure this process of the tribals to liberate themselves from non-tribal exploiters, non-tribal rulers, non-tribal traders and all those who are anti-tribals.

While PESA does acknowledge the centrality of the traditional system in the form of GS, it makes no provision for or even reference about the place and role of any of the existing traditional institutions. It was perhaps because of the realization of the wide variety of local traditional institutions, which may be totally different within the same community in different areas that cannot be captured within the ambit of a single central legislation (GoI 2006).

Traditional & Formal Systems: Two View Points

There are two views on the dimension of politics and governance in tribal areas. The informal politics is represented by the traditional tribal councils and the formal by the GP and state government. The first view holds that the present state of traditional systems in the tribal areas is highly uneven. There is an erosion of authority of the traditional system of self-governance due to the regulatory and development roles of the State. For example in Jharkhand, the traditional system is strongest amongst the Ho people; it is comparatively weak amongst the Santhals and the Mundas and very weak amongst the Oraons. In the latter case, the traditional community structures may be notionally in place. But their role has got largely circumscribed to matters of religious and to some extent social. The crucial aspects of governance relating to management of natural resources, the general economic system or social, even quasi-social matters like use of intoxicants have been apportioned by the formal system (GoI 2008).

The above argument underlines two factors responsible for this change: collapse of the traditional system itself especially during the last half century as the State usurped the role of traditional institutions and the influx of non-tribal population into tribal areas resulting in introduction of new systems thereby weakening the traditional system.

The second view holds that tribal institutions and customary laws connected with them survive, even flourish. This is mainly because the tribal communities have shown considerable resilience in adapting their institutions and their laws to the challenges they face. The Bhuria Committee expressing similar view states that Tribal GS and village councils have been vibrant institutions in the administrative, religious, political, economic, justice fields etc and while shaping the new PR structure in tribal areas, it is desirable to blend the traditional with the modern by treating the traditional institutions as the foundation on which the modern supra-structure should be built.

The National Institute of Rural Development study (2005) also purports this argument saying, “there is a popular belief that with the introduction of statutory political institutions, formal law and order machinery, modern infrastructural facilities, initiating several development programmes, etc., the traditional institutions of the tribals are on the way out. On the contrary, our (NIRD) study found that the traditional institutions of dispute resolution are not only functioning but are found to be still going strong among quite a few tribes and they are widely preferred to the modern systems” (Singh, 2005).

Rationale of the Study

The State of undivided Andhra Pradesh is a traditional home for 35 tribal communities, constituting 6.99 per cent of the total population of the State as per 2011 census reports (GoI 2013). The Scheduled Areas which are governed by 5th Schedule of the Constitution are spread over nine districts of Srikakulam,

Vizianagaram, Warangal, Visakhapatnam, East Godavari, West Godavari, Khammam, Adilabad, and Mahaboobnagar.

As mandated by the Central Act, the State of Andhra Pradesh amended the existing AP Panchayat Act, 1994 so as to bring that in tune with the provisions of the PESA, 1996 in its application to the Scheduled Areas, by passing AP Panchayat Raj (Amendment) Act, 1998 (Act No. 7 of 1998) to extend PR to the Scheduled areas of the state. The Government of AP issued rules under the act on March 21, 2011. There are around 6,000 villages that come under 5th Schedule area in the state.

A critical evaluation of the provisions of state act reveals that the act does not fully conform to the letter and spirit of the central act. There are many grey areas. Moreover, it took 13 years for the state to frame and issue operational rules under the act.

In the scheduled villages of the state different tribal communities coexist and cooperate. Although statutory panchayats have assumed some functions which were previously being discharged by the traditional village council in the tribal polity but the traditional council continues to be an integral part of the decision-making system on important issues and enforcing law and order in the community. The members of the traditional village council continue to be viewed with respect and the decisions of the council are still respected by the entire community. In spite of one council trying to overpower the other which is manifested in all forms of societies characterized by the existence of dual power centers, one can notice a fine interaction between the traditional and modern councils. The leaders of the traditional council understand the importance of modern politics in the initiation of developmental activities in their locality and accordingly cooperate with modern democratic functionaries such as Ward Members, *Sarpanches*, MPTC members etc. in discharging their Constitutional roles and responsibilities in Andhra Pradesh.

Proper Frame

There is a protest, especially from areas having strong traditional system, against superimposition of the formal system of panchayats in the Scheduled Areas. According to them, the entire system of elected panchayats goes against the spirit of tradition of self-governance in the concerned areas. It is also alleged that the introduction of elected panchayats is aimed at breaking the traditional system. The governance in the traditional system is based on consensus and not politics of vote. In the people's perception the latter is instrumental in breaking of the community. Therefore, there is a demand especially in Jharkhand for allowing the traditional system, as it is to have its full sway in the Scheduled Areas (Gol, 2006).

Thus, there is a general apprehension and concern about how the traditional councils and statutory panchayats interface and whether a synthesis is possible between them when PESA act is implemented. The reason behind is that although Bhuria Committee has dealt with the process of synthesis, the PESA act does not talk much about this. It was perhaps because of the realization of the wide variety of local traditional institutions, which may be totally different within the same community in different areas that cannot be captured within the ambit of a single central legislation. The states could have taken up this task, given the will, using the powers vested in the Governor under Para 5 (1) of the Fifth Schedule. This has not been even thought about (Gol 2006).

Proper synthesis of roles and responsibilities of the traditional councils and the formal panchayats as per PESA act are not only necessary but also essential for

effective facilitation of self-rule by tribals. The synthesis could, possibly, be achieved in two ways: by redefining/ declaring the geographical area of the 'village' and redefining the 'Gram Sabha'.

Definition / Declaration of the Village and GS under PESA Act

The living community at the village level is the basic unit of governance in the Scheduled Areas. But the central act did not bother much about it and defines village in Section 4(b) as:

'a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.'

The AP Act has adopted this definition of the village in part VI (A) (2) under "declaration of village in Scheduled Areas" mechanically. The rules under the same head prescribe the manner in which the Commissioner, Tribal Welfare would declare villages in Scheduled Areas as per the definition mentioned above. But, the state government declared the villages on administrative lines. A total of 11, 500 habitations from 5,948 Scheduled villages of the state have been identified as villages to be reorganised and declared villages for the purpose of conducting of GS. The Government did not bother to mind that the villages defined in terms of habitations are natural formations and should manage their affairs in accordance with traditions and customs.

It is clear that in scheduled areas the state government wanted to reorganise the existing habitations/villages and declare them as villages for the purpose of organising GS meetings on the criterion of 1) Contiguity 2) Homogeneity 3) Distance 4) Manageability (GoAP, 2012). There are two facets of this change – (a) Redefining the geographical expanse of the 'village' and thereby (b) Redefining the constituents of the people's assembly in the form of GS. This goes against the spirit of PESA which is unequivocal on the premise that the community and community alone constitutes the natural village assembly formally known as GS.

It is, therefore, important that when GS is formed for every scheduled village under the act, traditional councils of them ought to come together. Conflicts among them are generally not felt as they have been living together and settling disputes through some mechanism. Conflicts are expected when all villages having separate GS form into a GS at GP level. The question is the customs of which tribe should be followed while taking a decision on a dispute. How the customary practices of numerically less tribe/tribes are protected? How conflicts of this nature are addressed?

The central act further in Section 4 (d) says that *Every GS 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.*

The state PESA act though adopted the same has put a qualifier- without detriment to any law for the time being in force, for the customary mode of dispute resolution. The rules under the act undermined this capacity of the GS by granting both GS and GP to exercise this power. Thus, it totally ignored the spirit of the tribal self-rule and created so much of confusion in implementation.

Section.4 (a) of PESA act, 1996 prescribes that *"a State legislation that may be made on the Panchayats shall be in consonance with the customary law, social and*

religious practices and traditional management practices of community resources". This means that the PESA provisions are to be incorporated into the State PR legislations and that such incorporations shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources. This also implies that the state law should have enabling provisions for the tribal people and communities to redress their grievances or objections to any provision in any law applicable to Scheduled Areas that are seen as not being in consonance with the customary law, social and religious practices and traditional management practices of community resources.

Against this backdrop, the study seeks to address all the above mentioned areas.

Review of Literature

Participatory Education Action Research & Learn (2001) conducted a study on Tribal Self Governance Institutions (TSGIs) among tribes and participatory development in Jharkhand. The study not only dissected the TSGIs among Munda, Oraon, Ho and Santhals but also addressed contemporary questions of people's participation in the TSG and the TSG bodies' participation in government development programmes. It finds that the traditional institutions have been a product of a system developed by the tribals evolved and modified in a natural evolution process through ages. The system combines political affairs with social, religious and economic affairs including management and ownership of resources.

Ramesh Sharan, et al., (2003), surveyed in six districts of Jharkhand on Munda, Oraon, Ho, Bhumij and Santal about the status of their traditional self-governance. They canvassed the responses of respondents into degrees or yes/no taking parameters like participation including of women, intra-community or inter-community relations with TSG officials, capacity of headmen, correlation and coordination between TSG and statutory Panchayats, dispute settlement and effectiveness of TSG systems. This survey had been a robust quantitative assessment of the TSGIs as seen by both tribals and non-tribals.

Krishna Reddy (2000) studied the Primitive Tribal Group (PTG) community of Konda Reddis in Khammam district. The study observed that the tribal society operates by one principle or other or a combination of principles, producing different political systems. The Konda Reddis represent a political community and its leaders deal with political affairs by means of a customary legal system to resolve the conflicts that manifests within the political units the decisions of which are enforced. The study also finds out that PR system existed as a separate system independent of the traditional political systems and cannot be identified or equated with the traditional political system of the Konda Reddis.

The NIRD (2005) carried out a study in the states of Madhya Pradesh (Chattisgarh), Andhra Pradesh and Orissa on selective Particularly Vulnerable Tribal Groups (PVTGs) and major and minor tribes inhabiting the Scheduled V Areas focusing on the structure and functioning of the traditional tribal and village councils and the mechanism of their customary mode of dispute resolution. It observes that although the numerous tribal groups in the country display large diversity in their livelihood systems and cultural patterns, there is some fundamental commonality in the structure and functioning of the institutions of social control and dispute resolution. Most of the disputes in tribal societies revolve round material imbalance, adultery, rape, cultivated land including *Jhum/Podu*, trees, fishing and hunting rights, thefts, etc. Crimes like murder are usually referred to police stations. Some tribes like

Bhillalas tried to resolve murder cases also. The village/tribal councils have quite well laid manner of conducting the procedures in dispute resolution and implementing their judgments. The traditional customs and norms prevailing in the tribe form the basis for deciding the guilt of a person and party. The process of dispute resolution involve wide range of consultation, deliberations, oral evidence instead of documentary evidence, cross-examination of the witnesses, observation of behavior of disputed parties/persons and oath taking. The final judgment on the case is not meant to punish or convict but to incorporate the deviants into the life of the community. Only in extreme cases these councils resort to excommunication of the guilt. In most of the cases, it is always a negotiation of justice between the contending parties through the medium of traditional councils. The philosophy and approach of the entire procedure is directed towards the maintenance of harmony, integration and tranquility of the tribal community. Left to themselves, they have enough potential to manage their affairs effectively and economically, instead of forcing modern institutions of justice on them. The councils are still the most powerful instruments of justice. However, certain villages situated close to the urban centres and those with heterogeneous population, manifest weakening of the traditional council. Hence, State PESA laws must recognize and respect customary modes of dispute resolution and recognize the traditional structure of justice in the tribal areas as legal bodies (Singh, 2005).

A few more studies had attempted to analyse the functioning of traditional and statutory Panchayats which included Baxi (1975), Galanter (1972), Girtler (1976), Kushava (1977).

The above review of literature indicates the following research gaps:

First, a good amount of literature and documentation exists on Tribal Self-Governance Institutions in India. However, most of the studies discuss TSGIs separately without ample reference to Panchayats which have well ensconced in to tribal polity after their introduction especially after bestowing constitutional status on them. Second, the studies focused more on the traditional role of TSGIs and did not lay much emphasis on their new role in the context of emergence of new governance institutions. Therefore, a study on the status of TSGIs and their interaction with the latter in delivery of services is imperative.

Third, all the studies were conducted in pre implementation of PESA Act. There is hardly a study dealing with the interface of TSGIs and statutory panchayats in the state of Andhra Pradesh particularly after implementation of PESA Act from March 2011.

Fourth, most of the studies focused on the dispute settlement function of the TSGIs and there is hardly a study on other crucial aspects of governance particularly management of community resources like forests.

It is with these assumptions that a study has been proposed here to examine the changing interface between TSGIs and Panchayats in the context of Andhra Pradesh. The problem considered for the present study is: "Interface of Tribal Self-Governance Institutions and Statutory Panchayats: A Study in the Scheduled Areas of Andhra Pradesh".

Objectives of the Study

The main objectives of the study are:

1. To understand the structure, functions and status of TSG institutions in the Scheduled villages;
2. To find out the role of tribal self-governance institutions in the dispensation of justice and safeguarding and protection of community resources;
3. To identify the areas of cooperation, coalition, overlaps, conflicts etc. when traditional self-governance institutions interface with statutory panchayats; and
4. To suggest steps and ways to bring proper synthesis between TSGIs and panchayats for effective implementation of PESA Act in the state

More specifically, the study addressed two sets of questions: (i) what is the role, composition and functions of TSG institutions in tribal political system? What is the role of TSGIs in the context of constitution of Panchayats and implementation of PESA Act? And (ii) what is the nature of interface between TSG institutions and elected Panchayats in the post 73rd Constitutional Amendment Act scenario?

Methodology

Selection of Study District, Village, Tribe's

The selection of the study district, Visakhapatnam, was made on the basis of the district having largest Scheduled Area when compared to other scheduled districts of the state and presence of more number of tribal groups (15 tribes). The study purposively selected a Gram Panchayat which covers both the Particularly Vulnerable Tribal Group (PVTG) and other tribal groups living in the Gram Panchayat (GP) area. Thus, a fully scheduled GP of Palamamidi in G. Madugula Mandal of Visakhapatnam district has been chosen for intensive field research. An attempt has been made to compare and contrast different aspects of interface of the two village level institutions in both homogenous and heterogeneous villages. The village of Palamamidi is both a homogenous village with Khond tribal population living and has the GP office. Vanabhampadu, on the other hand, is home to Khond, Bagatha and Nooka Dora tribal groups and a hamlet village of Palamamidi GP.

The study has adopted case study method to figure out the structure and functions of TSGIs and their changing interaction with formal panchayats in their pursuits to serve the tribal fraternity.

Methods of Data Collection

Data from both primary and secondary sources have been collected for the purpose of the study. Since the study is an empirical exploration of tribal governance it adopted participatory methods such as observation, checklists, focus group discussions, key informants interviews and informal discussions for qualitative data collection from the field. This was done during January 2013 to June 2014. Separate checklists were prepared and used for collecting information from functionaries of TSGIs and GP and people. Checklist used for the latter focused on people's perception of two study institutions. Relevant secondary data such as articles, Panchayat and PESA Acts, census reports and books have been gathered on various attributes of the study.

Structure and Functioning of Tribal Self-Governance Institutions in India: A Comparative View

The Tribal Self-Governance Institutions with their own systems of governance, law and justice mechanisms vary significantly from one community to another. However, there are common features that are shared by all. These features can be summarised as:

- (i) The traditional system is a seamless organic whole comprising all aspects of people's life;
- (ii) The face-to-face community in a habitation or a group of habitations, as the case maybe, which is known in common parlance as 'our village' (This village may not be the same as the 'village' constituted under various laws!), is the primary building block of the traditional system;
- (iii) The general assembly of the community at the village level is competent to deal with all aspects of people's life including use of resources, resolution of disputes and meeting any challenge that is a threat to its identity;
- (iv) The traditional 'governance' at the village level is vested in an informal council of functionaries, responsible for secular as well social/religious matters. The functionaries are unequivocally answerable to the people. There are well-established customs for change in the leadership that are rare and for reaffirmation of community's confidence in the same. For example, the rite of reaffirmation is annual amongst the Mundas and triennial amongst the Oraons in Jharkhand. Nevertheless in many cases the succession has become virtually hereditary;
- (v) There is a traditional body for governance at the group-of-villages level. It is variously known in different communities, such as *Paragana*, *Paraha* etcIt attends to inter- village matters and also functions as an appellate body with regard to decisions at the village level; and
- (vi) There are higher-level formations as well amongst many communities with an apex body at the top. Their jurisdiction may extend to all villages belonging to the concerned communities in the entire region. (Gol, 2006).

As governance institutions the traditional tribal councils have been performing a wide variety of functions in accordance with tribal customs and traditions. According to Mohan Rao (2000), the functions and responsibilities of traditional village panchayat or *Kula panchayat* can be broadly classified as:

1. Upholding the societal customs, traditions, mores, codes governing matrimonial alliances, divorce, family disputes, inter-personal relations and fostering ethnic identity.
2. Safeguarding and promoting the economic interests of villagers/members of the tribe in allotting community lands and government waste lands for cultivation, shifting cultivation; allotment of non-timber forest produce (N.T.F.P.) community assets, and protection of common property resources (CPRs).

3. Religious rites and festivals celebration of annual religious rites, festivals, ceremonies in honour of village/forest/ community benevolent gods and goddesses and appeasement of malevolent spirits.
4. Political safeguards-development and encouragement of right type of leaders and maintenance of organic linkages with traditional and statutory leaders at different levels-administration of Justice as per traditional law, hereditary rights etc.
5. Protection of cultural heritage, maintenance and continuity of folk dances, folklore, traditional skills, knowledge etc.

Types of TSGIs in India

The TSGIs, with a strong concept of democratic participation, are composed of the council of village elders, village headman, village panchayat and so on. All these institutions consisting of a single person or a group of persons have interrelated, cross-cutting fields where one surpasses the other varying from situation to situation. These institutions are mainly of five kinds, viz.:

1. The Council of Elders, a temporary body of selected villagers, generally *coincides* with clan elders to look into cases brought before them;
2. The Village Headman, a hereditary post ;
3. The Village Panchayat: a body of the *panchs* headed by the village Headman. The *panchs* are elected by the villagers directly;
4. The Union of Villages, a regional panchayat headed by the regional head; and
5. The Tribal Chief, a hereditary post of supreme judicial authority at the tribal level.

KEY FINDINGS

The study reveals that there is a clear institutional basis with defined functions for the traditional councils in two study villages. The TSG institutions at village level are active though they have weakened on political front. They are still in good shape. The councils in sample villages have similar structures and are in operation. They have capacities to deliver the functions of executive, judiciary and development agencies. The council in a homogenous tribal village (Palamamidi) is found to be more vibrant and performs a wide variety of functions than the council in a multi tribal village (Vanabhampadu).

The TSGIs are preserving the traditional customs and norms of the society. They are still the most effective instruments of social control, rituals and economic life of the village. The council continues to be an integral part of the society in decision-making on important issues and enforcing law and order in the community. The members of the council continue to be viewed with respect and the decisions of the council are still revered by the tribal society.

The study also indicates a clear structural basis for resolution of disputes through TSGIs in tribal villages. The tribes living in the two villages have a similarity in relation to family pattern, marriage practices, inheritance, succession, traditional disputes resolution mechanism and interaction between the tribal and statutory panchayats. Procedures of imposing punishment or penalty are also quite similar in

two villages. Mostly cases pertaining to civil disputes within the community are dealt in the customary mode by the traditional councils while criminal cases are referred to the police. Though the Gram Panchayat gradually started functioning as a body of appeal, the tribal people seek complete redressal for their grievances within the traditional councils. These councils have a well-laid out procedure for conducting, resolving and implementing justice over marital inappropriateness, adultery and rape, property disputes, land boundary disputes, thefts and petty crimes. With the main aim of maintaining harmony and integration among the communities, the process of resolution often passes through consultations, deliberations, cross examinations, compromise and impartial judgment. The rationale being correction and not conviction and punishment, it is extremely positive in nature. Rare cases require excommunication. Non-compliance to the judgment and disrespect to the council would lead to ex-communication. Usually it is compromise on both sides. There is a wider participation of the villagers and it is really a democratic way of justice deliverance with a least delay in time, the only and key limitation being participation of women. They are very rarely allowed to participate in the dispute resolution or justice process.

Despite statutory powers, the panchayat has not made significant inroads in to the political system of the tribal communities in the initial stages on account of two reasons: First, the traditional council of Khonds was held well in the society as disputes brought before the council had been resolved to the satisfaction of the disputants. This kind of dispute resolution cannot be possible by the statutory panchayat given its limited authority and faith of the people. Secondly, the structure of the statutory panchayat is quite different from the traditional council. The latter is organized on the basis of ethnicity whereas the former is a heterogeneous affair. Spatially also, the statutory panchayat consists of many villages and it is difficult for it to deal the cases from these villages. In course of time, the situation has changed as the people recognized the fact that the panchayat is a legal authority and councils also showed disregard in political affairs. Thus, the influence of GP on the people has started increasing. The authority of the council and *Munasabu* has gradually eroded. The political functions of the council have been taken over by the statutory panchayats and now the former is operating in a limited way. They have been confined to social, religious, cultural and economic functions only.

As mentioned before the two study villages (of Palamamidi GP) have traditional councils headed by a male person called *Munasabu*. He is assisted by a small group of elders in decision making. The council is responsible for the socio-political order in the village. The study has also found the co-existence of GPs and TSG institutions with the latter often trying to adjust to the former. Another reason for this is the traditional council and statutory panchayat (GP) do not work for cross-purposes and thus are not in conflict with other. Hence, there are no conflicts observed between the traditional councils and panchayats in these villages. No doubt the spread of panchayats have brought a change in the functions of traditional councils. As discussed before in these paragraphs the traditional councils are mainly involved in resolution of disputes and they are not interfering with the panchayats. The GP sometimes acts as a council of appeal for the disputants who do not accept the verdict of the traditional council. The quarrels between individuals or between villages which could not be settled in the village by the council are also brought before the GP. Thus, the study notes that there are no conflicts between the traditional and modern panchayats observed in the study villages.

The study revealed that both the institutions were kept aside in the implementation of forest rights act. Even the GS was not given its due constitutional role. Though the

councils have played a key role in protecting and conserving the forests under their purview for generations they could not play any crucial role in deciding and validating the claims of their villagers. Thus, in tribal areas the constitutional and traditional bodies have been sidelined and ignored completely. The whole process was led, controlled and commanded by the officials.

RECOMMENDATIONS

In the light of the findings of the study, the following recommendations may be made for effective implementation of PESA Act in AP with active involvement of TSGIs.

- In view of study findings it is suggested that efforts should be made to revive the TSGIs and in places where they are effective, they should be strengthened.
- Since each tribal village is a natural village and has a traditional council in place which is managing their affairs more efficiently, there is a need to declaring it village under the act and constitute a GS for each natural village and start holding GS meetings. In a circular issued on September 2, 2013, the Government has declared the villages and constituted one GS for 3 to 6 villages in Palamamidi GP area. This is against the spirit of the PESA act. The study has found that almost all the 15 villages under the GP have TSGIs and they are in good shape and are managing their affairs independently. Since first Gram Sabha meetings after declaration of villages have not been held so far, it has to be modified and natural villages alone should be declared villages and GSs constituted accordingly under the act in the newly created Andhra Pradesh.
- The Bhuria Committee recommended for appointment of village traditional council and delegation of powers to it and also recommended that headman of the village should preside over the meetings of the GS. But these recommendations are not included in the Central Act No. 40 of 1996. The study has observed that tribal people still revere the council and respect their headman and respect his judgments.
- The AP PESA needs to be amended in line with the true spirit of Bhuria Committee and central PESA with the TSG institutions at village level accommodated/ integrated as/into GS, and ultimate powers have to be allocated to GS for bringing in real grassroots democracy. The TSG institutions may appropriately be remodeled.
- The Central PESA Act (Act No. 40 of 96), 1996 needs to be suitably amended to give the right to safeguard and preserve the tradition and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution at the village level to the traditional authority or remodeled GS. The study has found that the GS thus constituted is competent to safeguard and preserve the traditions and customs of the tribal people, their cultural identity and the customary mode of dispute resolution through TSGIs efficiently. The state act as well as the rules framed under it should be appropriately amended and GS alone is given this power in Scheduled Areas.
- The statutory panchayats can be made to look after the development and other related aspects of government without any superfluous authority of GS and its legal functions which should be left to the traditional institutions. Due modification should be made to incorporate and strengthen the role of women in these structures. Most problematic thing would be how to make women as chair persons of GS and conduct proceedings. With 50% reservation, women occupied the posts of *Sarpanch* and ward members in Panchayats. Community accepting women as heads of GS is the concern. This should be ensured by statutory provisions and

convincing the communities about the importance of women leadership and representation.

- In study village the constitutional and traditional bodies are sidelined or ignored in the implementation of acts/schemes as evident in the case of Forest Rights Act. There is a great need to give important role to both TSGIs and Panchayats.
- The police officials should work in consonance with the traditional tribal councils in the maintenance of law and order. The police and other officials who are outsiders should be given sensitization training emphasizing on tribal culture, values, customs, believes and practices.
- As the councils have been functioning as effective mechanisms of justice delivery by enforcing customary laws their role should be recognised and proper recognition is to be extended to them. Verrier Elwin, authority on tribal customs and traditions, observed that an important means of delivering the tribal people from a sense of inferiority is to strengthen their own system of government and to recognize and establish their own forms of jurisprudence and administration of justice. Furer-Haimendorf while referring to the judicial methods of the Bullangs and their tribal land considered that their own form of jurisprudence and their system of administration of justice fulfill the “very valuable function in tribal life”. He also urged that the government should strengthen the said pattern of law and “avoid any course of action which might distract from its influence and authority”.

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