

# Panchayati Raj structural amendments in Jharkhand

## Two sides of the same coin

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### British indirect rule in the Chotanagpur Plateau

In 19th century Chotanagpur Plateau, located in the south-western part of the British India Bengal Presidency, the colonial administration managed to exercise power over the local indigenous (Adivasi) population through traditional chiefs, who were co-opted to administer civil justice, maintain public order and security and manage natural resources. These rights and obligations were ascribed through the *hukuknamas* [record of rights] and the chiefs discharged their duties against a salary directly paid by the British administration. The British therefore controlled lands through pre-existing local power structures and, having traditional chiefs on their payroll, they started to claim the right to appoint and remove those leaders who did not satisfy their requirements or simply were not loyal to the British administration.<sup>1</sup> By doing this, they managed not only to save the costs of day-to-day administration, but also to become champions of local traditions in the eyes of the population as they 'preserved' traditional power structures and to make their presence on the territory widespread.<sup>2</sup>

Nonetheless, it is clear that this co-option was done within the norms of British imperialism, which was not interested in extending autonomy to the ethnic communities, but rather in gaining tighter control over these 'ungovernable' territories and joint administration over the rich resources of the area.<sup>3</sup> Indeed, local leaders had to conform to new norms (namely, positive state norms) and their source of legitimation in the eyes of the community shifted from being merely social to being superimposed by the colonial administration, which defined the spaces of existence and the features of traditional administrative patterns. This kind of complex interaction can be accounted for borrowing the concept devised by André Hoekema of 'internal conflict rules', meant as "legal rules, at the national level, that define the scope and limits as well as personal and material competence of an officially recognized, distinct, community-based jurisdiction and/or of an officially recognized, community-based authority".<sup>4</sup>

The assumption of my research is that the process of rationalization, co-optation and absorption of traditional administrative institutions carried out by the British first and by the independent Indian government afterwards, via the constitutional amendments to self-government schemes, deprived these communities of essential coping strategies they had devised internally to resist against exploitation and expropriation of land.

### Road to PESA

The 1992 constitutional reform, namely the Constitution (Seventy-Third Amendment) Act on Panchayati Raj institutions, provided for the insertion of a Part IX within the Constitution and gave constitutional coverage to a three-tiered structure with the goal of ending arbitrary State enactments of the Panchayati Raj system.

This structure envisaged a *Gram Panchayat* (an assembly of 5-30 elected members at the village level, in power for five years), which was linked to a *Gram Sabha* (a body consisting of



Above: Courtyard of an Adivasi house, Ranchi district. Photo courtesy of Idrometra.

persons registered in the electoral rolls relating to a 'revenue' village comprised within the area of the Panchayat at the village level), a *Panchayat Samiti* (at the block level) and a *Zilla Parishad* (district level). Within this constitutional scheme, the role of the traditional *sabha* [assembly], built upon the 'natural' village (which takes into account social and economic ties as well as geographical boundaries, as against the 'revenue' administrative one) was erased and superseded by new institutions, which borrow shape and functions from the traditional assembly paradigms but are, in fact, legitimated, disciplined and constituted by the state.

Following art. 243M, the amendment would not apply to the Scheduled Areas and tribal areas; the Scheduled Areas of Jharkhand, located in the Chotanagapour Plateau, with their Adivasi population were therefore left out from the purview of the amendment. Despite this explicit constitutional prohibition, several States in India did not provide for special exemptions and extended the three-tiered structure also to the Scheduled Areas comprised in their respective territories; this was the case for Jharkhand (which had been part of Bihar until 2001) through the Bihar Panchayat Raj Act, 1948. This praxis was declared unconstitutional in 1995,<sup>5</sup> which created a legal vacuum for the Scheduled Areas; formal institutions were declared illegal if constituted in Scheduled Areas, but the traditional ones were not recognized. In 1996 the federal Legislator adopted an act to correct this situation and regulate the extension of the Panchayati Raj system to the Scheduled Areas (Clause 1, art. 244 of the Indian Constitution). The Act was called Provisions of the Panchayat (Extension to Scheduled Areas) Act (commonly known as PESA), which laid out the general framework and the guidelines that should be followed by the subsequent state implementing acts.<sup>6</sup>

### JPRA: a partial fulfillment of the promises

PESA builds upon the three-tiered structure, envisaged by the 73rd Constitutional Amendment, introducing some important changes. First of all, the Legislator decided to privilege the concept of natural village over the revenue village one. The natural village becomes the unit against which to recognize the existence of the *Gram Sabha*, which shall "safeguard and preserve the traditions and

Right after the enactment of the 1992 constitutional amendment to the Panchayati Raj system in India, it became clear that it would be necessary to adopt different legal strategies for the so-called Scheduled Areas and the Adivasi communities living in these territories. These legal reforms skewed traditional patterns of justice administration and local governance, bringing about mixed results and concerns.

customs of the people, their cultural identity, community resources and the customary mode of dispute resolution" (art. 4.d). The powers conferred by PESA upon the *Gram Sabha* can be inflected in mandatory executive powers over plans, programs and projects for social and economic development (art. 4.e.i and 4.e.ii), consulting powers to be shared with the institutional Panchayats over the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects (art. 4.i) and recommendatory powers (to be shared with institutional Panchayats) over minor issues.<sup>7</sup>

Both *Gram Sabha* and *Gram Panchayat* were granted the power to prevent alienation of land in the Scheduled Areas and to restore any unlawfully alienated land of a Scheduled Tribe. Undoubtedly, the Legislator meant to endow the traditional *Gram Sabha* in Scheduled Areas with more power and recognition; nonetheless, this double pattern of shared powers turned out to be the downside of this reform and, eventually, one of the reasons of its substantial betrayal on the part of the several state implementing acts.

In the Jharkhand Panchayat Raj Act 2001 (JPRA), consulting and recommendatory powers were downsized and diluted, as major administrative tasks and *de facto* management over natural resources were allotted to *Gram Panchayats*, *Panchayat Samitis* and *Zilla Parishads*. This contributed to bringing back to the State key functions and prerogatives (mostly those related to land and natural resources), cutting out customary village institutions from these dynamics of local self-governance.

### Two sides, same coin

The process of institutionalization and disciplining of local traditional administrative bodies has manifold and, at times, contrasting implications, depending on the different actors affected. From the research that I conducted in 2017 in New Delhi and Ranchi, it emerged that the application of PESA and JPRA in Scheduled Areas positively contributed to the upliftment and empowerment of women within the village administration. Indeed, both Acts provide for women's reserved quotas at each institutional level, thanks to which women progressively managed to carve out spaces of expression and self-determination in the local political arena.

On the other hand, new electoral processes brought about the 'detrabalisation' of local

councils and a progressive delegitimization of traditional leaders. The JPRA norms created, in fact, a duplication of leading figures especially at the village level (one institutional and elected, and the other one 'traditional'), which implied a doubling of forums and the hybridization of traditional spaces. On top of this, there is an additional aspect related to the fact that several struggles against displacement projects have been led by traditional leaders and assemblies. For instance, the struggles against the Koel-Karo project were led and coordinated by local leaders who used their power to restrict access to the areas and issued entry bans against National Hydroelectric Power officials.<sup>8</sup> Disempowering traditional leaders and bodies therefore may end up depriving local communities of forums of resistance against external encroachments on and expropriation of Adivasi lands.

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### Notes

- 1 Sen, A. K. 2012. *From Village Elder to British Judge: Custom, Customary Law and Tribal Society*. Orient Black Swan; Das Gupta, S. 2011. *Adivasis and the Raj: Socio-Economic Transition of the Hos 1820-1932*. Orient Black Swan.
- 2 *ibid.*, Das Gupta, S.
- 3 Sen, A. K. 2017. *Indigeneity, Landscape and History: Adivasi Self-Fashioning in India*. Routledge; Damodaran, V. 2013. 'Indigenous Agency: Customary Rights and Tribal Protection in Eastern India, 1830-1930', *History Workshop Journal* 76:85-110.
- 4 Hoekema, A. 2017. 'Taking the challenge of Legal Pluralism for Human Rights Seriously', in Eva Brems et al. (eds.) *Human Rights Encounter Legal Pluralism. Normative and Empirical Approaches*. Hart Publishing, pp.77-96.
- 5 *Araka Vasanth Rao & Ors. Vs. Govt. of AP (WP 3817 of 1995)*, and *Basudeo Besra vs. Union of India (CWCJ 8262 of 1995)*.
- 6 The competence on 'local government' is allocated exclusively to the States, as per Schedule VII, List II.5 of the Indian Constitution.
- 7 Pal, M. 2000. 'Panchayats in Fifth Scheduled Areas', *Economic and Political Weekly* 35(19):1602-1606; Sudipta, B. 2015. 'Implementation of PESA: Issues, Challenges and way Forwards', *International Research Journal of Social Sciences* 4(12):49-54.
- 8 The Koel-Karo project would have caused the submergence of 135-140 villages, the displacement of 20,000 people and the loss of 66 acres of cultivated land (not to mention the destruction of sacred Adivasi burial and festival sites). As confirmed by the activist S. S., whom I interviewed in March 2017, in that period there were several inter-village meetings (summoned through traditional communication methods such as drums and arrows) to keep local communities informed about the upcoming steps. The project was officially dismissed by the government in 2010 (see also Mathews, R.D. 11 July 2010. 'The Koel Karo People's Movement in Eastern India', *Ritimo*; <https://www.ritimo.org/The-Koel-Karo-People-s-Movement-in-Eastern-India>).