

## Tribal Aspiration Regarding Self -Governance: Pathalgadi movement and implementation of PESA & Forest Right Act in Jharkhand

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### ABSTRACT

Tribes who always lives close to nature and treat water, land and forest as most sacred for themselves. The tribes from centuries have struggled for these three things and always make resistance for survival of their heritage. In present era of development they have seen a massive loss of their land and livelihood and the laws which are there to protect their right to self -governance are seems to be only in letter and not in spirit. Pathalgadi is a traditional practice of tribes of erecting stone slabs and by writing constitutional provisions which are provided to scheduled areas and empowering gram sabha which in recent years terms unconstitutional by state as some villages in Jharkhand people showed their discontentment with government policies and apathy. This paper focusses on need of empowerment of Gram Sabha by means of PESA Act,1996 and FRA 2006 and in the context of development the indigenous rights of tribes must not be compromised.

**Keywords:** Tribes, Pathalgadi, PESA, Forest Resource Act, Land Alienation

### INTRODUCTION:

Tribes in India from centuries have treated Forest, Water and Land as a prerequisite for their existence and they put a natural claim over these resources and they have put their resistance towards against any type of encroachment in their domain by any external agencies or state. In case of Jharkhand the tribal communities from centuries have witnessed domination and resistance whether the era of colonial period of British rule where we find resistance from Sidhu-Kano, Munda revolt, Ulgulan movement of Dharti Aba Birsa Munda and other movements. Tribes in Jharkhand from centuries have a system of self-governance which contributes a part of their tradition like Manki-Munda, Parha-Raja & Manjhi parganait system<sup>1</sup>. We found an instance of a some sort of Self-Governance council in every tribal village. These unit of self-governance acts as a decision making body for all matters like maintenance of village resources, activities related to agriculture, festivals, managing conflicts and taking appropriate actions against the wrong doers and these councils used to meet regularly to discuss relevant issues.

After India got Independent in 1947 these traditional system of self-governance becomes weak. The Indian constitution has a separate scheduled-V<sup>2</sup> which deals with provisions to administration and control of scheduled areas and scheduled tribes. At present, 10 states Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have scheduled areas. For Rural self-governance in India by the means of 73<sup>rd</sup> amendment in constitution a three tier system of Panchayati Raj gets constitutional status but its applicability to scheduled areas was restricted under Article 243(M) of Indian Constitution. Later on recommendation of Bhuria Committee Panchayat Extension To Scheduled Areas, Act 1996 was passed to ensure self-governance among tribes living in scheduled areas.

The PESA Act entrusted Gram sabha with absolute powers and was Centre of this legislation. This legislation entrusted Gram sabha with command over natural resources, minor forest product and mining lease<sup>3</sup>. This acts also states that the legislations on panchayat in scheduled V areas shall be inconsistent with customary laws, social and religious practice and prior consultation of Gram sabha is mandatory before any type of land acquisition. On the recommendations the Government of Jharkhand passed the Jharkhand Panchayati Raj Act,2001 and further

<sup>1</sup> Sharan.Ramesh,1999

<sup>2</sup> Basu,DD-The constitution of India

<sup>3</sup> Ministry of Panchayati Raj(Brief note on PESA in Jharkhand)

this provisions were amended in year 2010 with the provision of election of member constituting Gram Sabha was incorporated in it.<sup>4</sup>

The Forest Right Act,2006 is also an important legislation passed in 2006 which recognizes the marginal and tribal community rights over forests land on which they were traditionally dependent. The Forest Rights Act is capable of empowering local self- Governance by means of strengthening Gram Sabha by Forest management rights.<sup>5</sup> However in practice the important provisions of these acts were neglected by State Government and partial implementation of the provisions of these act were done by Government.

#### **Pathalgadi Movement:**

Pathalgadi literally means carving a stone, In Jharkhand there is a tradition of erecting stones with provisions of Constitution regarding Vth schedule and PESA Act written on it to spread awareness among tribes about their rights.<sup>6</sup> The Pathalgadi movement make important headlines in past years as in response of Amendments introduced by then NDA Government headed by Raghu bar Das in two important tenancy Act of Jharkhand viz Chotanagpur Tenancy Act,1908 and Santhal Pargana Tenancy Act,1949 these laws prohibited any type of transactions of land between tribes and non-tribes. The provisions of new amendment allows tribes to transfer their land to Government for commercial use. This move of Government were seen by tribes as an attack on their traditional identity and tribes by use of Pathalgadi movement has made strong objection .The tribes in this region they fear that in name of development their land and forest resources will be taken away. In response to this move of Government the tribes especially in districts like Khunti, Gumla, Simdega, Singhbhum of Jharkhand. <sup>7</sup> As a result of this massive protest erupts in parts of Jharkhand many people in this region have surrendered their Ration card, Aadhar Card as a protest to this. In many villages the entry of Government officials and even police in the periphery of their village. On the verge of this pathalgadi movement on one side the villagers in scripted the provisions of schedule-V of Indian constitution and PESA Act on stone and other side declared that particular region as an autonomous zone. In khunti district of Jharkhand the villagers have abducted the security personnel of veteran BJP leader and former Deputy Speaker of Lok sabha. One of the important facets of this new pathalgadi movement was the denial to acceptance of any type of government authority, opening of parallel Indigenous financial and educational Institution and asking villagers to send their child to these schools and deposit their money in that particular bank.<sup>8</sup>

#### **Action of Government to these movements:**

In the initial phase of this movement the govt was in dilemma regarding their response they claim that it's an organized plan to misguide the innocent villagers and their main motive was the opium trade and through the pathalgadi movement they want to escape the surveillance of police and govt agencies by boycotting these machineries of Government. Also some Missionaries was accused for misleading tribes. Leaders of this movement like Vijay Kujur, Jyoti lal Besra and others were booked under secession law and also two pastors were arrested from Khunti District for provoking tribes to practice Pathalgadi.<sup>9</sup> Raghubar Das then incumbent CM claimed that separatist force are working under veil of Pathalgadi movement separatist wanted to create a separate Kolhan state as in khuntapani some villagers tried to hoist a separate flag for kolhan under leadership of Rama Birua.<sup>10</sup> However Adivasis organization have claimed that pathalgadi is their tradition and by means of this they are creating a sense of awareness among their youth and government in the name of development are taking away their land, forest and resources to support the corporate giants. The tribes seen the amendment in two important tenancy act of Jharkhand as an encroachment to their rights. The Then NDA Govt had filed criminal cases against more than 10,000 person.

In 2019 state assembly elections JMM lead coalition which also includes Congress and RJD Came into power and they were sympathizer to these and have withdrawn all cases against pathalgadi supporter and in March 2021, CM Hemant Soren approved the resolution of the State Home department to take back cases against pathalgadi supporter<sup>11</sup>. The tribes have much aspiration from soren led government by nullifying the amendment and introduce all provisions of PESA Act in spirit. Many social activist claim that then only true meaning of self-

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<sup>4</sup> GoI (2010): The Jharkhand Panchayat Raj (Amendment) Bill, 2010, Bill No. 93-F, as passed by the houses of Parliament—Lok Sabha on 17 August 2010; Rajya Sabha on 25 August 2010

<sup>5</sup> Forest Right Act,2006 GOI

<sup>6</sup> Sharma Unnati: The Print

<sup>7</sup> Singh, Amit (2018): "Khunti se 8 rajyon main faili Pathalgadi inke master mind bhi Jharkhand ke ke hii," Dainik Bhaskar, Ranchi, 23 May.

<sup>8</sup> (2018j): "Jharkhand Sarkar khud anusuchit kshetraon ke kanoonon ki uda rahi dhajjiyan: murmur," Ranchi, 3 April. Dainik Hindustan

<sup>9</sup> Dainik Bhaskarathagdi ke liye bharkane main 2 padri samet 29 par case," Ranchi, 10 April.

<sup>10</sup> Dainik Hindustan, Ranchi, 28-feb-2018

<sup>11</sup> Mongbay: Demanding PESA Right, MD Ashghar khan

governance will be realized.

### **PESA Act & Self-Governance**

After the creation of state of Jharkhand two decades have passed but still we witnessed the poor implementation of provisions of PESA Act in Jharkhand as many specific groups from time to time have threatened to boycott the panchayat elections last of which was conducted in year 2022. The demand of tribes of scheduled areas in Jharkhand is regarding grant of constitutional status to tribal self-governance system as they claim that PESA Act empowers Gram Sabha as the sole decision making body. As the body of Gram Sabha are formed on tradition and have hereditary basis.<sup>12</sup> As the government of Jharkhand have failed to frame laws regarding Panchayati Raj elections. Villagers claims that the elected representative Mukhiya often supersedes the Gram Sabha. The point of concern of Gram Sabha is that Mukhiya becomes the owner of village and thus powers of Gram Sabha gets diluted in absence of clear provisions. Also there is a provision of Tribes Advisory councils under Article 244(1) in 10 states of India having scheduled areas including Jharkhand and its main duties is to advise on such matters pertaining to welfare and advancement of scheduled tribes in the state as may be referred by the Governor.<sup>13</sup> But unfortunately this institution is becoming a bone of contention between CM office and Raj Bhawan in Jharkhand and diverted from its original goal.

In Singhbhum region the Manki Munda union self- governance model is in practice since centuries similarly there are Parha Raja, Manjhi parganait, Dhoklo sohor type of self-governance models which are in practice among tribes in Jharkhand.<sup>14</sup> The demand of people among these groups is simple to give constitutional status to these models as they claims that provisions of PESA Act clearly refrain state from framing any law which is in conflict with traditions, conventional practices and traditional system of locals.

In Porahat (Chakradharpur) region of singhbhum the chiefs of Manki Munda system are protesting that their traditional system are slowly getting diluted and decisions regarding transfer of land, resources and others controversial all are taken by Mukhiyas. In these regions religious lands and farmlands were taken away by government without the consent of Gram sabha.<sup>15</sup> The locals in this region claims that any panchayat elections without the implementation of PESA Act is itself against the spirit of this act. Many activists claims that Government is unwilling to give power to gram sabha and favouring their corporate friends by granting them access to resources.

### **Way Forward:**

The PESA Act was introduced with an aspiration to recognize the self-governance system among tribes living in scheduled areas and tribes in Jharkhand has a tradition of self-governance as discussed above in this paper. As PESA Act has got legal sanctity and recognizes traditional system of local self-governance. Gram Sabha will be more empowered and it can also make some necessary amendments in traditional system. But due to Red tapism, Lack of Political will, legal issues and willingness for devolution of power has led to partial implementation of this act in spirit. Government in Jharkhand always says that they are committed to implement every provision of this Act in spirit but still lots of works are need to be done as we find instances of Pathalgadi which was a response to Government action to change the tenancy act in Jharkhand. As we all are aware that for tribes Land, Water and forest are of prime importance and they must not be taken away from them without their consent for any type of projects whether it is Government Projects. A proper mechanism needs to be followed prescribed in the act whether Gram Sabha will be supreme decision making body then only true self-governance will be practiced.

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<sup>12</sup> Panchayati Raj: M. Aslam, NBT

<sup>13</sup> PIB, Press release, Ministry of tribal Affairs, 6 DEC 2021

<sup>14</sup> Sharan Ramesh: Tribes in Jharkhand: Basic entitlements

<sup>15</sup> Demanding PESA Rights Jharkhand tribes, Mongabay series