

Issues in tribal governance

It is a public-administration approach, in which all wings of the government are harmoniously involved, that is required to deal with tribal disaffection, not only a uniformed-police one, says Raghav Chandra

THE Fifth Schedule of our Constitution prescribes how to administer scheduled areas and scheduled tribes. There is a provision to set up a Tribes Advisory Council (TAC) and the governor has sweeping powers to make regulations for the peace and good governance of any scheduled area, prohibit the transfer of tribal land and regulate the business of money lenders. The governor may, after consulting the TAC, recommend to the President repealing or amendment of any law made by the Centre of the state as applicable to a scheduled area.

Another provision in Articles 243M envisages a special dispensation for scheduled tribes. Thereby, normal devolutions of Panchayati Raj brought about by the 73rd Constitutional Amendment are also held in abeyance for the scheduled areas. "Nothing in this Part shall apply to the scheduled areas."

While the 73rd Constitutional Amendment mandates elections to panchayats in five years, in the case of scheduled areas, it is envisaged that government will give due consideration to the special needs of the tribal areas and mandate a unique methodology for their development. "Parliament may, by law, extend the provisions of this Part to the scheduled areas and the tribal areas subject to such exceptions and modifications as may be specified in such law..."

Such unique dispensation could mandate that no non-tribal can work in tribal areas, extract minerals or take away tribal land. As regards panchayats in the scheduled areas, eligibility for council membership and for heading a *gram sabha* could be restricted to membership of a tribe, a tribal could be spared electoral disqualification for minor offences under laws relating to excise/forest, tribal local bodies could be vested with powers to validate relief and rehabilitation measures as well as to impose octroi/export tax/cess on mining royalties/minor forest produce and so on.

The Panchayats (Extension to Scheduled Areas) Act, better known as Pesa Act, was born in 1996 in this light. How-



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ever, the fact that this Act has a tardy history of its application has something to do with its confusing name; the emphasis currently being on Panchayati Raj methodology and not on special provisions for scheduled areas.

As per the Fifth Schedule and Article 243M, the Centre could have deliberated and mandated minimum special treatment that it wanted to deliver to the tribal areas. For instance, to merely take the context of panchayats, does it perceive the need for elections in tribal areas or recommend local tribal councils?

Pesa could have been fashioned into a proactive instrument of national tribal policy, but it is only an enabling Act.

If a state chooses not to equip its laws suitably to safeguard tribal interests, Pesa is silent, as long as no provision is inconsistent with the low threshold hinted by it. Pesa requirements are reservation of 50% seats for tribes in panchayats, consultation with — not consent of — the *gram sabha* before land acquisition/grant of mining lease/permits over minor forest produce, etc.

For urban areas within scheduled areas, the void is more glaring. Article

243ZC mandates that the provisions of the 74th Constitutional Amendment shall not be applicable to urban local bodies until the central government makes a law for governing them. There is no central law that has been enacted yet. As a result, in 2009, as directed by the high court in a PIL, elections to local bodies could not be conducted in 52 Nagar Panchayats and Nagar Palikas of Madhya Pradesh and the state was forced to appoint tahsildars to run the urban local bodies.

THE Land Acquisition Act (of 1894) is silent on the role of the *gram sabha* in advising the state about public purpose, local objections, compensation, etc. Moreover, vocal members of a *gram sabha* can be influenced at the local level. What is pertinent is the meeting of the entire *gram sabha* and for it to be presided over by a person from the tribes. It is necessary to balance the rights of the tribal with the requirements of economic development? What are the instances where the right to eminent domain will give precedence to the sentiments of the tribals and will allow them to veto the ac-

quisition process? How should compensation be determined?

There is ambiguity about the methodology to be deployed. Should it be the average of three-year sales, or of only one year? Should historical use of the land define its value or future/potential usage? Should current market value based on collector guidelines be taken as benchmarks or potential value-based on opportunity cost/replacement value? What happens where because land of tribals is historically prohibited from alienation, the market for land is non-existent and, due to this, market-failure land values are preposterously low? Should tribals not be made primary shareholders in the project that is arising over their land, so that they benefit from the premium accruing on their land? Should equivalent cultivable land as compensation not be necessary, keeping in view the evanescence of monetary compensation? Should tribal land not revert to him or his heirs once the project for which it was acquired ceases to exist? It is noteworthy that even the Central Rehabilitation Policy of 2007, which has tilted in this direction, could not be converted into law.

Some states have taken Pesa more seriously. For instance, Madhya Pradesh amended its Land Revenue Code in 1998, empowering a *gram sabha* in a scheduled area to restore possession of the land to the original holder or her legal heirs, if a non-tribal is in possession of tribal land. In case the *gram sabha* is unable to enforce this restoration, then it can forward the case to the sub-divisional officer, who will restore possession in three months.

Clearly, there is enormous scope for proactive legislation and institutional development to protect and promote the tribes. It is a comprehensive public-administration approach, in which all wings of government are harmoniously involved, that is required to deal with tribal disaffection, not only a uniformed-police one.

(The author is an IAS officer. Views are personal)