

## Issues in tribal governance: The Economic times

Raghav Chandra, Sep 4, 2010, 05.08am IST

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 ascheduled 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. However , 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.