Panchayati Raj structural amendments in Jharkhand

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.

Notes
2. Des Gupto, S.
6. The competence on ‘local government’ is allocated exclusively to the States, as per Schedule VII, List II.5 of the Indian Constitution.
8. The Kool-Karo project would have caused the submergence of 153-50 villages, the displacement of 20,000 people and the loss of 66 acres of cultivable land (not to mention the destruction of sacred Adivasi burial and festival sites). As confirmed and bodies therefore may end up depriving local communities of forums for resistance against external encroachments on and appropriation of Adivasi lands.

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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 system with the goal of ending arbitrary State enactments of the Panchayati Raj institutions. 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 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and economic ties as well as geographical boundaries, as against the ‘revenue’ administrative one) was erased and superseded by new institutions, which borrow shapes and functions from the traditional assembly paradigms but are, in fact, legitimated, disciplined and constituted by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 Chotanagpur 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 1993,6 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. 243 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.7

JPTA: 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 recognize the existence of the Gram Sabha, which shall “safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution” (art. 4.i). The powers conferred by PESA upon the Gram Sabha can be inferred in mandatory executive powers over projects, programs and policies of social and economic development (art. 4.i.a and 4.i.b), 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.8 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.

Two sides, same coin

The process of institutionalization and disciplining of local traditional administrative bodies has manifested and, at times, contrasting implications, depending on the different actors affected. From the research that I conducted in 2017 in New Dahi and Ranchi, it emerged that the application of PESA and JPTA 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, local electoral processes brought about the “detribalisation” of local councils and a progressive deliteralization of traditional leaders. The JPTA 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 emerging among 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.8 Disempowering and bodies therefore may end up depriving local communities of forums for resistance against external encroachments on and appropriation of Adivasi lands.

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