

Institutional Reforms for Decentralized Governance and the Politics of Control and Management of Local Natural Resources: A Study in the Scheduled Areas of India*

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1. Introduction

The politics of access to and control over natural resources has been an old issue dating back to colonial times. But it acquired prominence only in the 1970s and 1980s when numerous conflicts arose between the state and the local communities living in far-flung areas of remote forests and inaccessible hill tracts. While the emergent international awareness about environmental issues have made it a matter of national debate, in this process, the story of tribals, who solely depend on such resources like land and forest, has been one of struggle, marginalization and deprivation. Successful invasions in the pre-colonial and colonial periods, on the one hand, and the state sponsored and private sector national and multinational companies, on the other, have steadily eroded the land, water and forest rights of local communities (Gadgil and Guha 1992; Guha 1983, Shah 1994, Tucker 1988). As a result, local communities have virtually been transformed from a relatively independent, self-reliant and self-determining entity to one dependent on the vagaries of money market, labour contractors and government agents (Fernandes 1992; Sharma 1989).

Even the experiment in decentralized governance in India, which aims at empowering the people for effective participation in local governance, has hardly given the tribals any power to have control over these resources. Despite the constitutional provision of special powers vested with the governors wherein they can exclude any Act of Parliament or of the State Legislature to the 'scheduled areas'¹ by notification, or extend them with such exceptions and modifications, which they think necessary for peace and good governance, none of the governors of states having scheduled areas have applied their discretion in enforcing such provisions. On the contrary, all the acts and enactments passed by Parliament as well as State legislatures have been extended to the scheduled areas without making suitable modifications to suit to the socio-cultural and politic-economic ethos of the tribals. Even the Panchayati Raj Acts for decentralized governance in various states, in the past, were extended to the scheduled areas without taking into consideration the customs and traditions, and their system of governance.

However, the latest Panchayats Extension to Scheduled Areas (PESA) Act 1996 has made it mandatory for the States having scheduled areas to make specific provisions for giving wide-ranging powers to the tribals on matters relating to decision-making and development of their community. Technically, when the Act refers to extending the provisions of Part IX of the Constitution to the fifth schedule areas; politically, it gives radical governance powers to the tribal community and recognizes its traditional community rights over local natural resources. It not only accepts the validity of "customary law, social and religious practices, and traditional management practices of community resources", but also directs the state governments not to make any law which is inconsistent with these. Accepting a clear-cut role for the community, it gives wide-ranging powers to *Gram Sabhas*², which had hitherto been denied to them by the lawmakers of the country.

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In keeping with the above, while some states have enacted laws in conformity with the Act, giving wide-ranging powers to the people in general, and the gram sabhas in particular, with regard to their rights over local natural resources like forest, land and water, some of the states have come out with laws diluting the very essence of the Act. As the experience suggests, the performance of Panchayati Raj Institutions (PRIs) in the scheduled areas of tribal concentration have not been very encouraging due to lack of effective and meaningful participation of tribals. On the contrary, the very process of governance and development has, in many cases, marginalized them causing numerous disadvantages; prominent among them being displacement and loss of land – tribals' main resource base (GOI 1992). Whether under the threat of evacuation due to declaration of national parks or due to construction of multi-purpose dams, mining or industrialization or lack of access to and control over local natural resources, examples galore wherein about 1,500 tribal villages in the resource rich but otherwise poor regions in India have declared themselves as 'village republics' taking control over their local natural resources (Mahapatra et. al. 2002). May it be for controlling forest or carrying out mining operations by the State or private companies, these 'village republics' have come into existence often as a reaction to or response against specific state policies.

The basic premise of this paper is that there are inherent contradictions between constitutional provisions, state policies and practices with regard to the rights of tribals over local natural resources that have rendered them helpless and marginalized. In a Hobbesian sense, in the early phase of civilization, when human beings sacrificed some of their natural rights to the State (*Leviathan*) so as to get the security of their 'life' and 'property', since then the state has been acquiring more and more powers in the name of governance and development curtailing the basic human rights of citizens. In the process, when the state has gained unproportionate powers relegating the citizens into background, the poor and the weaker sections of society, particularly the tribals living in and around the hills and forests, have suffered the most. While the expansion of state control over the forest and other natural resources has resulted in drastic reduction in the rights of tribals over them, the hard facts, as mentioned above, bring into sharp focus the great hiatus between the fundamental law of the land and its objectives and aspirations with the forest, land, and mining laws and their practice by an implementation machinery that have remained largely insensitive to the plight of the local communities. There appears to be some thing wrong in the entire scheme of regulatory laws relating to natural resources and their control and management, right from their conception to policy formulation and implementation.

The present paper thus attempts to study the politics of control and management of local natural resources within the institutional framework for decentralized governance and the rights and role accorded to people in the process. It tries to do so by examining and analyzing the constitutional provisions, policy legislations and their practices followed over the last half a century and more. The paper is divided into five sections. Having outlined the broad issues and the objectives of the study in the introductory section, the second section discusses the evolution and administration of scheduled areas and the system of its governance. The third section spells out the institutional reforms for decentralized governance (PRIs) and the control and management of local natural resources with a specific focus on the Extension of Panchayats to Scheduled Areas Act 1996. The fourth section deals with the emergence of the institution of 'village republics' in the tribal areas. Taking up the *Kucheipadar* village in Rayagada district of Orissa as a case, it analyzes the forces and factors that compelled the tribals to take control over their local natural resources by declaring themselves as republics, the system of their governance, and the use and management practices of natural resources like land, water and forest. The concluding section highlights the important lessons to be drawn from this tiny 'village republic' for designing responsive laws and effective management practices for the protection and management of scarce natural resources for the sustainable development of local tribal communities.

2. Scheduled Areas and the System of Governance

2.1 Formation of Scheduled Areas

The constitutional and legal history of the formation of scheduled areas in India can be traced back to the colonial period. While the policy of the British government was solely directed and dominated by the colonial interests, it was based on isolation and exploitation of the tribals. Since the policy favoured the vested interests, i.e. non-tribal landlords, contractors and moneylenders, they not only took possession of tribal's land, but also brought the tribals in perpetual bondage. Such encroachments on tribals' right in land and forest led to the expression of anger in the form of tribal uprising in many places. While British used force to contain the unrest among the tribal population, to deal with the tribal unrest on a long-term basis, they evolved special laws for administering the tribal areas and to protect their interests, as they were culturally and economically different from the neighbouring peasant communities.

Accordingly, a number of Acts such as Scheduled Tracts Act 1870, Scheduled Districts Act 1874 and the Government of India Act 1919 were enacted by the British Parliament wherein areas with large concentration of tribals were segregated and isolated for separately dealing with the problems of the tribal people. While the 'backward tracts' declared under the Government of India Act 1919 were nothing but the same as those of 'scheduled tracts' and 'scheduled districts' with certain additions and omissions, in the name of helping the tribals with special protections, the Government of India Act 1935 was brought in providing for the creation of 'excluded' and 'partially excluded' areas with separate political representation for the tribes.

Under the Government of India Act 1935, while the popularly elected governments took charge of the administration of the provinces, in the 'excluded' area the Governor functioned in his own discretion. In the case of 'partially excluded' areas, the governor functioned with the advice of his ministry. Since the North-Eastern tribal region was considered very backward, they were wholly excluded from the scope of the normal laws and the central or provincial legislature had no power to make laws. Only the Governor-in-Council had powers to legislate for the administration of these areas. In the second category of backward areas, which were classified as 'partially excluded' areas, the governor was vested with power to enforce or refrain from enforcing any provincial enactments.

These provisions were continued even after independence by incorporating them in the Constitution, of course with some modifications. While the wholly excluded areas were incorporated into the sixth schedule covering states of Assam, Meghalaya, Tripura and Mizoram in the North East, the fifth schedule of the Constitution covered the tribal areas of the rest of the country. Currently, the fifth schedule covers tribal areas in nine states of India namely Andhra Pradesh, Orissa, Jharkhand, Chhatisgarh, Madhya Pradesh, Maharashtra, Gujarat, Rajasthan and Himachal Pradesh.

2.2 Special Provisions for Peace and Good Governance in the Scheduled Areas

The administration of scheduled areas is governed by the fifth and sixth schedule under Article 244 of the Constitution. As mentioned earlier, the sixth schedule applies to tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram, which provides for an elected body of Autonomous District Council (ADC) with legislative, executive and judicial powers. The Autonomous District Council for which elections are held regularly once in every five years is empowered to make laws on land, forest, water, village or town administration, marriage and divorce, inheritance of property, social customs etc. The ADC is also empowered to decide whether an Act made by the Parliament or the State legislatures on the powers conferred on the Autonomous District Councils can be applied to the council area or not. It is also empowered to set up courts to administer justice within its jurisdiction.

The tribal areas in the rest of the country are covered under the fifth schedule of the Constitution, which contains provisions for the administration and control of the scheduled areas and scheduled tribes. Apart from requiring the governor of each state having scheduled areas to make a report to the President regarding the administration of the scheduled areas in his state, the fifth schedule also deals with the provision for the constitution of a Tribes Advisory Council (TAC) consisting of the elected tribal legislators to advise the governor on matters pertaining to the welfare and advancement of scheduled tribes. The governor is vested with special powers for the administration of Scheduled Areas. He is empowered to exclude any Act of Parliament or of the State Legislature to the scheduled area by notification, or extend them with such exceptions and modification, which he thinks are necessary for peace and good governance. The governor can issue notification repealing or amending any Act of Parliament or of the State Legislature or any existing law, if he thinks that these Acts/laws are detrimental to the interests of the tribals.

With the consent of the Tribes Advisory Council, the governor can make regulations for the administration of the Scheduled Area to regulate or restrict transfer of land from members of scheduled tribes, to regulate allotment of land to them and to regulate money-lending business. The powers conferred on the President under this Schedule have been left flexible with the intention of making different sets of regulations to suit to the socio-cultural and socio-economic needs of different tribal communities living in different states or in different areas within a state.

2.3 Powers, Privileges, Rights and Realities

While the scheduled areas have been created with a purpose to provide special safeguards for the areas in which scheduled tribes are in preponderance, Article 244 and 244A read with Fifth and Sixth Schedules of the Constitution outline in detail the powers, privileges, rights and responsibilities of the President, Union Government and the governors regarding the scheduled areas. In addition to Article 46 of Part IV (Directive Principles of State Policy) of the Constitution which states that

“The state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation”

there are about 20 other Articles which prescribe the whole framework for regulatory and development functions of the state relating to the scheduled tribe population of the country.

In addition to the above, special provisions for scheduled tribes have also been made through certain Acts and orders which are protective, ameliorative and concessional in nature. Exempting the scheduled tribes from Hindu Succession Act 1956, Hindu Adoption Act 1956 and Hindu Marriage Act 1956, special provisions have been made for their family and land rights. Thus, the customary marriage and succession rules of the scheduled tribes have remained largely untouched. Protection of land rights of the tribals has also been made by recognizing their traditional rights over it and restricting its alienation to non-tribals. Most of the State governments have taken legislative and executive measures in order to protect tribal lands. Moreover, the national policy on tribal development emphasizes on developing the tribals along the lines of their own genius and encouraging in every way their own traditional arts and culture, respecting tribals' rights to land and forests, and working through and not in rivalry to their own social and cultural institutions.

Looking at the legislative history it would, thus, be clear that right from the inception of the colonial administration, the scheduled areas were treated distinctly from other areas. The tribals were protected from exploitation; their rights and title to enjoy the lands, their occupation and their autonomy, culture and ecology were preserved; infiltration of the non-tribals into tribal areas was prohibited. Even the migrant non-tribals were prohibited to purchase the lands in scheduled areas from the tribals except with the prior sanction of the officer appointed by the government in that behalf.

However, in practice, the situation in the scheduled areas of the country is entirely different. While there has been a large influx of non-tribals into the scheduled areas in the last half a century, in many places, the tribals have been reduced to a minority in their own homeland. In the name of development, dams were built, industries were set up and mining was taken up on a large scale in the tribal areas resulting in displacement of about 20 percent of the tribals (Rao 1996). The record of the rehabilitation of those tribals has also been very pathetic. In spite of the special provisions made for the peace and good governance, the scheduled areas are being governed mechanically, and sometimes ruthlessly, by the laws passed by the state as well central governments without any modifications. Whether it is the Forest Act or Land Acquisition Act or Excise Act or Mining Laws; all of them are being applied in the tribal areas as they are, causing serious problems.

The governors could have extended forest, excise, mining, land acquisition laws and criminal and civil procedure codes with necessary modifications to the scheduled areas. They could have modified the Forest Act enabling tribals living in scheduled areas to continue with their age old customary rights to meet their fuel, fodder and small timber requirements without any restrictions. Similarly, the vending of liquor by outside agents or the state agencies could have been prevented in the scheduled areas by allowing the tribals to distill liquor to meet their religious requirements. Unfortunately, the governors in none of the states having the scheduled areas used their discretionary powers to modify the Acts to suit to the socio-cultural and politico-economic ethos of the tribals in the scheduled areas. Not even the Panchayati Raj Acts for decentralized governance. In the late 1950s and early 1960s, when almost all the states enacted Panchayati Raj Acts establishing panchayats at the village, intermediate and district level as third tier of government, the same was extended to the scheduled areas in respective states without taking into consideration their socio-economic and cultural environment, their customs and traditions, and their system of governance.

The latest in hand is Andhra Pradesh government's attempt to transfer tribal land in the Nimalpedu village in Vishakapatnam district of Andhra Pradesh. The Samata judgment

3. Institutional Reforms for Decentralized Governance and Control and Management of Local Natural Resources

3.1 Panchayati Raj and Decentralized Governance: The Early Experience

As institutional mechanisms for decentralized governance, PRIs were introduced in late 1950s and early 1960s at the village, intermediate and district level on the basis of the Balwant Rai Mehta Committee recommendations. At that time, while the state governments were solely responsible for enacting laws on Panchayati Raj and holding elections to those bodies, after an initial euphoria, the interest in PRIs started waning. Apprehending dangers of the emergence of alternative power centres at village, block and district level, the ruling elites in almost all the states started neglecting the PRIs by not holding regular elections to these bodies. Some states like Orissa had even gone in for abolishing the Zilla Parishads as early as 1964. However, a few states like Karnataka and West Bengal had kept the momentum going by reforming the PRIs in their respective states with relative successes.

3.2 Constitution Seventy-Third (Amendment) Act 1992

With an aim to strengthen the democratic institutions at the grassroots level and make them vibrant, the Government of India, in 1992, enacted the Constitution 73rd and 74th Amendment Acts to empower the people for effective participation in local governance. The Constitution 73rd and 74th Amendment thus inserted Part IX (Article 243 to 243ZG) in the Constitution to ensure a Panchayati Raj system with certain revolutionary and progressive measures. Making periodic and compulsory elections to the local panchayati raj bodies a constitutional obligation of the state, the constitutional amendment brought in some important measures like reservations for Scheduled Castes, Scheduled Tribes, Other Backward Classes and women, State Election Commission, State Finance

Commission and many other radical provisions to ensure more decentralization and peoples' participation in local governance and development process.

Excluding the operation of Part IX of the Constitution to the fifth schedule areas, the Parliament had withdrawn the legislative power of the state legislatures and the special powers conferred on the governors to make regulations for the scheduled areas on the Panchayati Raj set-up. Taking into consideration the special conditions that exist in the scheduled areas, the parliament reserved to itself the power to make a separate legislation with necessary modifications for the scheduled areas. But while enacting Panchayati Raj Acts, many states including Orissa extended them to the scheduled areas contravening the restrictions imposed on them by the Constitution.

3.3 Panchayats Extension to Scheduled Areas Act 1996

As it is widely known, after a long debate and discussion on the Dillip Singh Bhuria Committee recommendations³, delays and deletions, the Parliament, in December 1996, passed the Panchayats Extension to Scheduled Areas (PESA) Act 1996. Providing panchayats for the scheduled areas with a difference the Act states that a tribal village in a scheduled area will consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs. It further states that the tribal community of a scheduled area as a whole will be coherent and united working organization in the form of a 'Gram Sabha'. In fact, while the Act has many outstanding features, the most striking one is of the role of gram sabha, which has been made the nucleus of all activities and endowed with specific and wide ranging powers and functions which does not figure in the main provisions of Part IX of Constitution. Giving a critical role to the community in the form of gram sabha, the Act states that;

- Every gram sabha in the scheduled areas will be competent to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and the customary mode of dispute resolution.
- Every gram sabha will approve the plans, programs, and projects for social and economic development before they are taken up for implementation. They will also be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programs.

As regards the control and management of local natural resources, the Act specifically states that:

- The gram sabha or the panchayats at appropriate level shall be *consulted*⁴ before making the acquisition of land in the scheduled areas for development projects and before re-settling or rehabilitating the persons affected by such projects in the scheduled areas. However, the actual planning and implementation of the projects in the scheduled areas will be coordinated at the state level.
- Planning and management of minor water bodies in the scheduled areas shall be entrusted to the panchayats at the appropriate level.
- Recommendations of the gram sabha or the panchayats at the appropriate level shall be made mandatory prior to grant of prospecting license or mining lease for minor minerals in the scheduled areas.

- The prior recommendation of the gram sabha or the panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction.

The Act further states that while endowing the panchayats in the scheduled areas with such powers and authority as may be necessary to enable them to function as “institutions of self-government”, the state legislature shall ensure that the panchayats at appropriate level and the gram sabha are endowed specifically with-

- The ownership of minor forest produce; and
- The power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a scheduled tribe.

Consequent upon the enactment of the PESA Act 1996, state governments were required to amend their Panchayati Raj Acts within a year from December 1996 for extending the provisions of Part IX of the Constitution to the scheduled areas. In the process, while some states enacted laws in conformity with the central Act, giving wide-ranging powers to the people in general, and the gram sabhas in particular, some of the states have come out with laws that have diluted the very essence of the Act. Specific mention must be made of the eastern State of Orissa, which has a substantial percentage of tribal population⁵ with scheduled areas covering around 44.70 per cent of the total land area of the state.

In conformity with the Panchayats Extension to the Scheduled Areas Act 1996, Orissa extended the Panchayats to the scheduled areas by enacting the Orissa Gram Panchayat (Amendment) Act 1997, Orissa Panchayat Samiti (Amendment) Act 1997, and Orissa Zilla Parishad (Amendment) Act 1997. A comparative analysis of the State Acts and central Act in their extension to the scheduled areas makes it clear that while incorporating some of the provisions of the of the Central Act, the government of Orissa has, in many ways, deprived the tribals of their community control over local natural resources and hence diluted the very essence of the PESA Act 1996.

The PESA Act 1996 envisages the community as the basic unit of self-governing system. As mentioned above, Section 4 (b) of the Act defines that a village shall consist of one or more habitations or hamlets comprising of a community and managing its affairs in accordance with its traditions and customs. Since a community in tribal areas is a functioning collectivity, which has face-to-face habitational relations, the formal recognition of the ‘community’ and the assembly of its members as ‘gram sabha’ is the most significant achievement in the history of democratic institutions built so far. Further, the significance of command over community natural resources as recognized by the Act is not in isolation or a mere economic issue, but in relation to the cultural identity of the people. Since the ‘community’ in the form of ‘gram sabha’ enjoys the constitutional recognition, its authority cannot be questioned anymore. But unfortunately, in extending the panchayats to the scheduled areas under Orissa Gram Panchayat (Amendment) Act 1997, the power has been conferred upon ‘gram sabha’, which comprises of all the voters of a *gram* (village) consisting of many communities having distinct socio-cultural practices and different interests.

Regarding the traditional rights and customs of tribal people, their cultural identity and community control over resources etc., as mentioned under Section 4 (d) of the central Act, Orissa provides rights to ‘Gram Sasan’⁶ making it competent to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and the customary mode of dispute resolution *consistent with the relevant laws in force and in harmony with basic tenets of the constitution and human rights* (originally not provided under the Central Act of 1996). This in fact

implies that in case of any dispute, the hold of Criminal Procedure Code, Indian Penal Code, Orissa Forest Act etc. would prevail over the customary laws of these communities. By this the state practically does not give any right to tribal people to safeguard, exercise and preserve their traditional rights.

As regards the control and management of local natural resources like (1) consulting the gram sabha or the panchayats at appropriate level before acquiring of land in the scheduled areas for development projects and before resettling or rehabilitating the persons affected by such project (2) obtaining recommendations of the gram sabha or the panchayats at the appropriate level prior to grant of prospecting license or mining lease for minor minerals, and (3) planning and management of the minor water bodies, the state under Orissa Zilla Parishad (Amendment) Act 1997 confers this right to Zilla Parishad which without the approval of 'gram sabha' or 'gram panchayat' can give land on lease for mining, for development projects, for the resettlement of displaced people, and manage minor water bodies. In this context, practically the state does not give any power to the people, the *gram sabha* or the *gram panchayat*.

This apart, matters concerning ownership and use of minor forest produce and preventing land alienation and restoring alienated land of a scheduled tribe, which has been entrusted to the gram panchayat cannot be implemented unless and until the existing regulations like Orissa Forest Act 1972, and Orissa Land Reform Act 1960, Regulation 2 of 1956 regarding the transfer of Immovable Properties in scheduled areas are amended according to the new State Acts.

A critical analysis of both the central Act and the state Acts brings into light the fact that with regard to the control and management of local natural resources like land, water and forest, rather than giving power to the community through gram sabha, almost all the powers have been entrusted either to the gram panchayat or the Zilla Parishad which even is not required to consult the gram sabha or the gram panchayat. Moreover, by defining the gram sabha as a community or 'communities' consisting of large number of people with different culture and customs, the state has also not bothered to safeguard and preserve the traditions and customs of people, their cultural identity, community resources and the customary mode of dispute resolution.

4. Village Republics and Management of Local Natural Resources

As a concept, 'village republic' owes its origin to the Gandhian philosophy of 'Gram Swaraj'. With an objective to rebuild India free from the yokes of deprivation, disparities, and discrimination that proceeded along with the struggle against foreign rule, Gandhiji advocated the concept of 'village republics' and 'village self-government' wherein each village being a republic would be self-sufficient for its own vital needs, and yet inter-dependent on its neighbour for other. In this model, the village was conceived as the centre of a super-structure of concentric circles of governance with a bottom up approach.

In fact, India had had a rich tradition in decentralized democratic governance wherein village communities working independently as 'little republics' used to manage all their village affairs (including management of local natural resources) for centuries as a management tool for a complex livelihood system. So strong were these republics that writing to the Select Committee of the House of Commons, in 1982, Lord Ripon once observed, "The village communities are little republics, having everything that they can want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts." While the British Empire did everything to weaken these little republics, the formalized government control over forest and other resources on the one hand, and the government-created village level institutions, on the other, gave a deathblow to these traditional village institutions.

After independence, the framers of the Constitution debated on village republics and many aggressively suggested a republic consisting of these tiny republics. In its resolve to build India into a *sovereign socialist secular democratic republic* though the Indian state never attempted to adopt the traditional village institutions as units of governance, it is only recently that such institutions have come into existence in large numbers, mostly in the scheduled areas scattered over the states like Rajasthan, Maharashtra, Andhra Pradesh, Orissa, Chhatishgarh, Jharkhand and Karnataka (not a scheduled area state).

One such example is the Republic of Nimalpedu in Vishakapatnam district of Andhra Pradesh. In 1992, the entire village was threatened to be bulldozed by the earth-removers of a private mining company, which had taken the lease from the government of Andhra Pradesh to extract bauxite. While the villagers were advised to move out of the village and settle down somewhere else, faced with the threat of evacuation 200 residents of the village called a meeting only to decide that that they could not move without the perennial stream and the few tamarind and mango trees. Thus began a five-year-old long legal battle to throw out the mining company from their village. In July 1997, the Supreme Court gave the verdict⁷ that in the fifth schedule areas nothing could be taken without the consent of the 'gram sabha'. Since the gram sabha did not give consent to carry out the mining operations, the company had to abandon its Rs. 2500 million investment just to enable the villagers to declare it a 'village republic' and take control of the resources in the village area. Like *Nimalpedu* in Andhra Pradesh, there are many such villages like *Mendha* in Maharashtra, *Seed* in Rajasthan, *Dongripara* in Chhatishgarh, *Horomoncho* in Jharkhand, which have declared themselves as village republics and taken control over their local natural resources.

Whether under the threat of evacuation due to mining operations, industrialization, declaration of national parks or lack of access to livelihood, examples galore wherein about 1,500 tribal villages in the resource rich but otherwise poor regions in India have declared themselves as 'village republics' taking control over their local natural resources (Mahapatra et. al. 2002). May it be for controlling forest or carrying out mining operations by the State or private companies, these 'village republics' have come into existence often as a reaction to or response against specific state policies. As documented by Mahapatra et. al (2002), residents in these villages control their local natural resources – forest, land, minerals and water resources. They have also formed effective institutions to manage these resources. They plan, execute and resolve all their affairs inside the village. Government officials and programs are accepted only when the gram sabha approves them. In many such villages, the forest department, the police and other officials are just restricted to executing programmes chalked out in village meetings.

In this backdrop, when gram sabha has become the core of village governance in the emergent village republics through which people manage most of their village affairs, and when the government of Orissa has not properly defined the gram sabha, let alone endowing them with adequate powers and functions, the paper intends to focus on the village republics in Orissa. Taking up the *Kucheipadar* village republic as a case, it attempts to understand and reflect on the forces and factors that compelled the residents of this village in the Rayagada district of Orissa to declare it a republic and take control of their local natural resources. It also focuses on the system of their governance and the management practices so as to draw lessons for designing responsive laws and effective management practices for the protection and management of scarce natural resources for the sustainable development of local tribal communities.

Whereas the information used in this study is drawn from our ongoing study on "Institutional Reforms for Decentralized Governance and Management of Local Natural Resources: A Study of Village Republics in India", the fieldwork for this particular village was carried out in April 2003. Reflecting on the collective efforts on the part of ordinary tribals to advance their

rights, improve their lives by taking control of the governance system at the village level, the case study explores the journey of the tribals for local self-government through a long drawn struggle against the multinational mining companies on the one and the indifferent and rent-seeking agents of the state on the other.

4.1 Background of the Village

Located about 25 kilometers away from the Kashipur Block, *Kucheipadar* is a relatively big tribal village consisting of *Kondh* tribes and scheduled caste population. With a population of around 340 distributed over 68 families, tribals represent 60 percent of the total population of the village. The scheduled castes constitute only 40 per cent of the village population. There are no other castes in this village. The village has a total area of around 1600 acres of land of which 65 per cent is covered by barren hills and mountains. Almost all the villagers have some amount of *patta*⁸ land, which varies from 1.5 to 20 acres per individual household. Known for extensive shifting cultivation, whether someone has land or not, almost everyone in this part of Orissa (Rayagada district) practice shifting cultivation in the hills by doing the slash and burn exercise. While the output from shifting cultivation is considered to be more compared to the farming in *patta* land, paddy and pulses are the main agricultural crops the villagers grow in their land. Though mostly dependent on the monsoon, the village has few natural streams flowing from the hilltop. During the shortage in rainfall, the tribals make use of the stream water to irrigate some of their lands. The village has one Primary Health Care Centre, an *Anganwadi*⁹, a M. E. School and one High School opened recently which is being privately managed by the Gram Sabha.

4.2 Genesis of the Problem

As mentioned above, in the absence of any forest based resources due to clearing of forests upto the top of the hills due to extensive shifting cultivation, people of *Kucheipadar* and other adjoining villages draw their livelihood mainly from agriculture. Land being the only source of livelihood, the tribals were a contented lot in cultivating their lands by using water from the perennial streams that flow from the hilltop crisscrossing the terrain landscape.

But the problem began in 1993 when the Utkal Alumina International Ltd. (UAIL), a Consortium of multinational company consisting of INDAL, TATA, ALCAN (from Canada) and HYDRO Aluminum from Norway decided to establish an Alumina Plant at Doreaguda near *Kucheipadar* village of Kashipur block in Rayagada district by investing around 24,000 millions of rupees to exploit bauxite from the nearby Bapilimali hill. On coming to know about the proposed Alumina Plant and being threatened by the fear of displacement, which was imminent, a group of 18 local tribal representatives from the nearby villages met the then Chief Minister Mr. Biju Patnaik who assured them that the site of the proposed project would be changed. But immediately after the Assembly election, in 1995, when a new government came to power the UAIL resumed its activity and continued its survey work for the Alumina Plant. Then the people from *Kucheipadar* and surrounding areas organized among themselves, started protesting against the proposed project and resisted the company from going on with its activities.

In the meanwhile, in 1995, people came to know about another Alumina Plant that was proposed to be established by L & T and ALOKA of America with an investment of 15,000 Million rupees in the *Kusumobile* village of Sikherpai Panchayat in Kalyansinghpur block of Rayagada district. Further in 1998, the people of this area came to know about the establishment of another Alumina Plant proposed to be built by Aditya Birla Aluminum Company at Kansariguda village in Bankem Panchayat of Kashipur block. The fact that this part of Orissa has a huge deposit of mineral resources of the country (98.4% of Chromites, 95.3% of Nickel, 69.7% of Bauxite, 30% of Graphite and manganese, 26% Iron Ore and 23.8% of Coal), after the onset of economic liberalization one company after the another are rushing in to this area for exploitation of these resources. With a view to attract more and more foreign direct investment, the government of

Orissa, on the other, is willingly providing them with the lease over the land in tribal areas which is very much a scheduled area.

Initially, the people were told that the Utkal Alumina Plant would displace only 148 families from three villages including Kucheipadar would be. It was later found that as many as 43 villages are going to be directly or indirectly affected by the Alumina Plant through displacement. When this information reached the public that the project was going to affect their lives and livelihood of thousands of their fellow tribes, this angered the people and they started opposing the UAIL with renewed vigour. The tribals continued their struggle against the companies through public rallies and meetings, peaceful agitations, road blockades, etc. Though they have been fighting their battle against the mighty companies and the state amidst false police cases (registered against them), lathi charges and other forms of police atrocities, the incidence of brutal police firing at a public meeting of tribals in Maikanch village on 16th December 2000 that caused death of 3 tribals and wounded several others was a turning point in tribals fight against the state and the companies.

While the Company and the police thought of terrorizing the tribals with a hope that they would give up their struggle against the Alumina Plant, the death of 3 tribals strengthened the morale of the tribals and their resolve to fight against the company by sacrificing whatever they can to protect their land and natural streams that form the source of their livelihood. This has put on hold the activities of the company for the last two and half years. While the tribals' struggle against the bauxite mining is being spearheaded by *Prakrutika Sampad Suraksha Samiti* (Council for Protection of natural Resources) formed by the local people themselves and many other organizations supporting them, it has had its impact on village local self-governance in Kucheipadar and other adjoining villages facing the threat of evacuation and loss of land. With a determination to fight the multinational companies from taking away their land and displacing them from their natural environment with assured livelihood systems, people of Kucheipadar village have proclaimed independence by declaring their village as a republic. Putting up a signboard at the village square in the entry point of their village, they have debarred the government officials and politicians from entering into the village without permission of the villagers. When the Superintendent of Police of Rayagada district, District Collector and even the Chief Minister Mr. Giridhar Gamango (a tribal himself) had to seek permission from the villagers for entering into the village and talking to them, interestingly, two of the former M. L. As. namely Mr. Antara Majhi (belonging to Congress party) and Mr. Akhil Saunta (Biju Janata Dal), who have their permanent residence in Kucheipadar village, stayed away from their homes apprehending threat to their lives from the angry people in the aftermath of killing of tribals in Maikanch. Forming Gram sabha among themselves, the people of Kucheipadar have taken control over their local natural resources and have evolved their own methods and practices for managing their resources.

4.3 System of their Governance and Management

In all the villages declaring self-rule, natural resources and their equitable distribution among the people form the core of their governance. Without being bothered by the governor's definition of a village (under the Orissa Gram Panchayat Amendment Act 1997), like all other village republics, people of Kucheipadar have drawn their village map and formed their *gram sabha*, which has become central to village governance. Unlike the older village republics like *Seed* in Rajasthan and *Mendha* in Maharashtra, which have formed different committees to look after different resources in the village, in the comparatively new village republic of *Kucheipadar* and other adjoining villages, gram sabha directly monitors the village affairs.

It must be mentioned here that in the past Kondhs of Orissa had their traditional system of village council, which used to be taken as the traditional embodiment of authority within the village. As a deeply respected institution, it used to decide on a wide range of matters such as scrutiny of the

village's common fund, settling of dates and other practicalities concerning villages feasts, festivals and sacrifices, planning a hunt, land matters, and the settlement of quarrels regarding land, the disciplining of a member who has, for example, been seriously accused of witchcraft, etc. Meeting under the chairmanship of the village headman, the village council used to deliberate on village affairs for hours together. Time used to be of little relevance in important council meetings. Not only the defendant and culprit used have their say, but also any member would speak at whatever length he wishes. Questions used to be freely asked, witnesses called and long discussions followed. Wise members were locally recognized and respected whatever economic status they belonged to. The chairman exerts no apparent guidance but gradually a feeling of consensus emerges. Only when this developed into unanimity, he would put it into wards and sum up the action to be taken.

Set in such a rich tradition of self-governance, the gram sabha of Kucheipadar village has taken onto itself all the affairs of the village and chalked out the road map for their development. With the direct intervention of the gram sabha, the villagers have evolved innovative solutions to their local problems. Since Kucheipadar village has no forests left for themselves, the first thing that the villagers decided was to regenerate forest on the degraded and barren lands in the hills. In the gram sabha meeting people decided to regenerate forest in a natural way by protecting the hills from shifting cultivation and cattle grazing. The gram sabha decided that at least 2/3rd of the *donger* (hill) land from the top to the bottom would be protected for regeneration of forest and the rest 1/3rd of the land at the base of the hills would be allowed for cultivation. It further decided that since most of the villagers have their own *patta* land only those having no land or the marginal farmers would be allowed to cultivate the forestland. This decision of Kucheipadar Gram Sabha was also communicated to the other villages requesting them to come out with such a practice. As a result, not only in Kashipur, but also in around 10 villages that we visited, 2/3rd of the hill area from the top has been protected for natural regeneration of forests and only 1/3rd being cultivated by the landless labourers and marginal formers. On the decision of the Gram Sabha people have been guarding the protected areas by following a 'roster' system. While it takes a very long time for the forest to regenerate, started some two and half years back, the villagers of Kucheipadar are confident that in another 10-15 years to come they would have green forest in their backyard so that they could meet their fuel, fodder and other small timber requirements.

Though there are a number of perennial streams flowing from hilltops surrounding Kucheipadar and adjoining villages, for agricultural purpose the tribals depend mostly on the rainwater. In the absence of any check dam or minor irrigation project to tap the water from the perennial streams, most of the water flows down and goes waste. While the villagers have been demanding the construction of some minor irrigation projects for over last few decades, not much has come through from the government. Realizing the critical value of water for life and livelihood and also for the environment, the villagers have, through voluntary contribution of labour and cash, diverted a few streams up in the hill to the village area through the agricultural lands through a complex network of diversion weirs and trenches thus irrigating at least 200 acres of land. While the gram sabha has proposed to do much more, it requires huge financial and labour investment for doing so. Tribals have therefore created a Village Common Fund and are mobilizing resources for various developmental activities in the village.

Considering the poor literacy rate among the tribals, literacy in this village was found to be not so bad. While there were six primary school teachers with educational qualification upto matriculation, there were 4 people with higher secondary education. However, there were a large number of boys who had dropped out from the 8th or 9th standard. As mentioned earlier, Kucheipadar has only a M. E. School with classes up to 7th Standard. After passing out from the village school the boys and girls have to travel at least 15 kilometers to pursue their secondary education. Though few of them take the trouble of going in for high school education outside the

village, most of them give it up half way through. Realizing the need for education and the problems involved in traveling such a long distance everyday, the villagers decided to have a high school in their own village. Accordingly, with contribution from the villagers themselves a high school has been functioning in Kucheipadar for the last two years. However, the villagers need resources for building the infrastructure and for making payment to the teachers who have been serving voluntarily so far. The Gram Sabha therefore is considering the wage and means of mobilizing resources for meeting such developmental expenses. For example, they have come out with the practice of community labour participation for cultivating private land the proceeds from which would go to the Village Common Fund.

Interestingly, when the gram sabha has been deciding on a whole lot of issues including education and natural resource management, the statutory gram panchayat or the panchayat representatives have been rendered insignificant. Though they have been supporting the people in their fight against the UAIL and other bauxite companies, owing to lack of much power to the gram sabha or gram panchayat in the scheduled area they have not been able to make any contribution for the development of their village community.

5. Concluding Observations

Institutional reforms not only refer to changes or innovations in the organizational forms but also to social customs, beliefs, taboos, national ideologies and their operationalization through formal legal structures, bureaucratic and policy environment, structures of property rights and rules for changing them. In its effort to bring in some kind of institutional reforms at the grassroots level, while the government of India has laid down the policy framework through PESA Act 1996 for giving radical governance powers to the tribals, in the first place, all the state governments have not followed the Act in true spirit. Secondly, while some state governments have gone in for giving wide ranging power to the people, they have not provided an enabling environment by changing the old archaic laws or the bureaucratic mindset and attitude that come in conflict with the new sets of laws under the Panchayats Extensions to Scheduled Areas Acts in various states. The enforcement of the general laws in the tribal areas has virtually eclipsed their natural rights. While the Panchayat Acts for the scheduled areas acknowledges the competence of tribal communities to manage the resources, the application of laws such as the Land Acquisition Act, Forest Conservation Act, Wildlife Protection Act etc. have been applied indiscriminately against the interest of tribals. This has made it difficult for the gram sabhas or panchayats to operate in an independent and autonomous manner creating conflicting situations in many cases.

Furthermore, when the state itself is engaging conflict with the rights of tribals, globalization and the new market economy is forcing fundamental changes in policies across all natural resources. This has certainly forced the tribals to take control of their local natural resources by declaring themselves as villager republics and evolve their traditional management practices. As the foregoing discussion on the functioning of village republics in Kucheipadar in Orissa or elsewhere in the country suggest, the tribal communities through their gram sabha have been able to manage their local natural resources and protect their natural environment with relatively greater success than the statutory panchayats have been.

Keeping this experiment in view and the fact that tribals have not been able to accept the panchayats whenever it has been established without taking into consideration their social system, customs and traditions, it is high time that the State governments come up with amendments into their Panchayat Acts that are in complete conformity with the central Act that gives the power to the gram sabhas in the form of tribal communities. Then only, the tribals will be able to function in conformity with their customs and traditions as institutions of self-government and manage their local natural resources for in a sustainable manner.

Notes

¹ The scheduled areas are those areas of tribal concentration that have been declared by the Presidential Order on Scheduled Area under Article 244 of Indian Constitution. The Constitution makes a distinction between the Scheduled Tribes and Scheduled Areas. While Article 342 empowers the President to specify the 'Scheduled Tribes' of a State or that of a Union Territory after due consultation with the governor of a State or Union Territory, as the case may be, the expression 'Scheduled Areas' has been defined to mean such areas as the President may by order declare to be Scheduled Areas.

² *Gram Sabha* is the village council of which all adult members of the village are members. Defining a tribal village as "a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs", the PESA Act 1996 stated that a gram sabha would consist of all adult members of the village (community) whose names are included in the electoral rolls for the Panchayat.

³ When the extension of panchayats under 73rd Constitutional Amendment Act to the scheduled areas by various state governments was held *ultra-vires* of the Constitution by the High Courts of many states, it was held that Part IX of the Constitution can be extended to the scheduled areas only through an Act of Parliament. Accordingly, under the chairmanship of Sri Dillip Singh Bhuria, Member of Parliament, the government of India, in 1994, appointed a Committee of members of Parliament and experts to make recommendations on the law concerning the extension of provisions of the 73rd Constitutional Amendment to the scheduled areas. Submitting its report in February 1995, the Committee observed, "While shaping the new panchayati raj structure in tribal areas, it is desirable to blend the traditional with the modern by treating traditional institutions as the foundations on which a modern suprastructure should be built."

⁴ Whereas the Bhuria Committee had recommended for 'approval' of the gram sabha, the PESA Act 1996 had provided for only 'consultation'.

⁵ Orissa occupies a special position in the demographic map of tribal India. Of the 573 tribal communities in India (Census 1991), Orissa has 62 groups of tribes numbering about 7,032,214 population, which is 10.37 per cent of total tribal population of the country and 22.21 per cent of Orissa's total population.

⁶ Refers to village administration that is mostly carried out by the executive wing known as 'Gram Panchayat'.

⁷ Hearing the Special Leave Petition (SLP) case against the government of Andhra Pradesh for leasing out tribal land to private mining companies in the scheduled areas a three-judge bench of the Supreme Court of India in a historic judgment (called *Samata Judgment*), in 1997, declared that all lands leased to private mining companies are null and void. Following the Constitution Seventy-third (Amendment) Act 1992 ... and the Andhra Pradesh Panchayats Extension to Scheduled Areas Act 1997 and the provisions mentioned there under Section 4 d, j and m (iii), the Honourable Court declared that minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance from the state. Prohibiting transfer of tribal land in scheduled area by way of lease to non-tribals, corporation aggregate, partnership firm etc., the Court directed the central government to hold a Conference of all Chief Ministers, Ministers holding the Ministry concern and the Prime Minister and central Ministers concerned to take a policy decision for a consistent scheme throughout the country in respect of tribal lands. For further details on the case, see the Supreme Court judgment on *Samata Vs State of Andhra Pradesh* on the SLP © No. 17080-81/95 dated 11.07.1997.

⁸ Patta land is that land which is recorded in the records of the revenue department over which the people have legal rights.

⁹ *Anganwadi* is a pre-primary school for children (up to 6-7 years) run by the government.

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