

POWERS AND FUNCTIONS OF TRIBAL GRAM SABHA UNDER THE FOREST RIGHTS ACT 2006 IN FOREST LAND-RESOURCE GOVERNANCE, CONFLICT WITH EXISTING INSTITUTIONS AND POSSIBLE SYNERGIES

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This article discuss the Forest Right Act (FRA) 2006 and its Rules (2008 & 2012), the first legislation that brings constitutional recognition to Scheduled Tribal (ST) GramaSabhas (GS) in Kerala in the background of Article 40 in the Directive Principles of State Policy of the Constitution “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” The article further discuss and emphasis the need of synergy.

Keywords: Forest Right Act (FRA) ,Forest Rights Committee (FRC) ,Community Forest Rights Act, CFRmC, PESA.

The Forest Right Act (FRA) 2006 and its Rules (2008 & 2012) is the first legislation that brings constitutional recognition to Scheduled Tribal (ST) Grama Sabhas (GS) in Kerala since there is no 5th Schedule areas recognized or PESA is implemented.

Article 40 in the Directive Principles of State Policy of the Constitution which was not enforceable reiterated that: “The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” The few states that enacted laws did not sustain the growth of the formal Panchayat Raj Institutions (PRIs) resulting in their decline. In order to reconstruct local governance and to bring in uniformity, the 73rd (Panchayat Raj) and 74th (Nagarpalika) constitutional Amendment Acts were passed on 22 and 23 December 1992 respectively adding Part IX titled “The Panchayats” and Part IXA titled “The Municipalities.” In Kerala, the Panchayath Raj Institution (PRI)s came into force in 1994 and it has been gone through various amendments until 2010. The recognition of the Ward Sabha as the GS has been one of its shortfall in bringing real local self governance representing micro-level village institutions. The ward sabha consist of more nearly 1000 people representing a large arbitrarily constituted village rather than natural assemblage of homogenous and interacting people. This large structure 'Ward Sabha' as the grass root level democratic body 'Grama Sabha' failed in bring 'direct democracy' through representation of 'natural village assembly' as in many other states like Maharastra in which 'Grama Sabha' is a natural village assembly and many such Grama Sabhas constitute a Ward Sabha.

In Kerala the Scheduled Tribal population is very less 1.48% only and they live small villages or hamlets. Usually they fail to represent themselves in the PRIs because of the large size of the definition of

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the village and Grama Sabha and are mostly dominated by mainstream people. The recognition of Scheduled Areas for Tribal dominated regions also was not came into action due to various reasons despite series of committee recommendations, struggles and agreement between tribal organizations and the state government. Later the Kerala Government declaration in 2003 to recognize the hamlet level assembly of all adult members not less than 50 families as 'Oorukoottam' as the grassroot level body in decision making for ST projects with a Government order did a significance change in ST developmental process especially in the implementation of Tribal Sub Plans. But this GO to recognize 'Oorukoottam' not impose a constitutional power and was not powerful in decision making process especially in land and resource governance. In this contest the forest right act with a provision to recognize small tribal hamlets as 'village' and all of its members as 'Grama Sabha' in recognition of 'forest land and resource rights' as well as its sustainable management in future has great significance.

The Definition of Grama Sabha in Forest Right Act and its Applicability in Kerala

The Forest Rights Act (FRA)2006 defines village and Grama Sabha in Sections 2(p) and 2(g) respectively

Sec.2(p)- "village" means—

(i) A village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996); or

(ii) Any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or

(iii) Forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) In the case of States where there are no Panchayats, the traditional village, by whatever name called

Sec.2(g): "Grama Sabha" means-

a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees,

with full and unrestricted participation of women.

Various rights under forest rights Act 2006

The rights defined under the FRA are under three categories:

1. Individual Right (Sec. 3(1)a) where an individual can claim land rights

2. Community rights (Sec 3(1) (b), (c), (d), (e), (h), (i), (j), (k) and (l), which includes rights like ownership of minor forest produce (MFP), fishing rights, cattle grazing, fire wood, Nistari, PVTG right, Intellectual property and the CFR right.

Developmental right (Sec 3 (2)) : Gram sabhas can claim forest land up to a maximum of 1 ha for 13 different common purposes, where not more than 75 trees per ha can be felled. The Divisional Forest Officers are empowered to approve the diversion, provided the Gram Sabhas approve the proposal of the user agency.

Powers and Functions of the GS under FRA 2006 in settling forest rights as well in post CFR recognition

The Act defines the Gram Sabha as the authority to determine forest rights and the future management of these forest lands. Gram sabha is a statutory body, a legally constituted official authority for the implementation of the Act at Grass Root Level. The Gram sabha constitutes the Forest Rights Committee (FRC) [Rule 3].

The Gram sabha calls for claims from its members and the FRC conducts inquiries in order to verify such claims, notifies the Forest and Revenue departments and makes further recommendations to the Gram sabha. The FRC also prepares the claims on behalf of the Gram sabha for "community forest rights in Form B and the right over community forest resource under clause (i) of sub-section (1) of Section 3 in Form C"

The Gram sabha considers the recommendations of the FRC and determines rights and extent of rights of individuals, and community. The Gram sabha in turn considers the recommendations made by the FRC in the form of resolutions and forwards them to the Sub-Divisional Level Committee.

Gram Sabhas also have to consent when villagers are sought to be relocated for the creation

of inviolate Critical Wildlife Habitats under Section 2(b) of the Act. Gram Sabhas consider whether the resettlement provides for a secure livelihood to the members.

Further, consent of the Gram sabha is mandatory for any diversion of forests falling within the jurisdiction of the GS as per the orders of MoEF [F.No.11-9/1998-FC(pt), MoEF dtd 30.07.2009] for non-forestry activities. Under Sections 7 and 8 of the Act, Gram Sabhas are also empowered to issue notices for violations of any FRA provisions by any official to the State Level Monitoring Committee for actions to be taken within 60 days (offences with fine up to Rs.1000). The quorum for the decisions of the Gram sabha is fifty percent.

The Act confers ownership of Minor Forest Produce to the Gram sabha which also has the power to issue transit permits under Rule 2(1)(c).

Further, the Gram sabha has now the power and responsibility to protect, conserve, preserve, regulate use and manage the resources (wildlife, forest and biodiversity) falling within its geographical jurisdiction [S.5].

The amended rules 2012 provides further clarification on post CFR Governance: the GS Should “constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act”. (Rule 4 (1) (e)) The Gram sabha also has to “monitor and control the committee constituted under clause (e) which shall prepare a conservation and management plan for community forest resources in order to sustainably and equitably manage such community forest resources for the benefit of forest dwelling Scheduled Tribes and other Traditional Forest Dwellers and integrate such conservation and management plan with the micro plans or working plans or management plans of the forest department with such modifications as may be considered necessary by the committee”. (Rule 4 (1) (f))

The Gram sabha also has to approve all decisions of the committee pertaining to issue of transit permits, use of income from sale of produce, or modification of management plans. (Rule 4 (1)(g)).

Recognition of GSs under FRA in Kerala

A committee was constituted in Kerala in 2008 in

Kerala to study the constitution of GS under FRA and as per their recommendation the hamlets or cluster of hamlets were selected as village (Sec. 2 (p)) and all the adult members sec. 2(g) constitute the GramaSabha under FRA. Govt. listed and constituted 510 GSsin 15th July 2008, Forest Right Committee (FRC) were also elected within each GS from among its members to serve as functionaries 2009 onwards. The forest rights especially individual rights and developmental rights have been given at least partially based on powers, decision and resolution of GS across Kerala.

Various Authorities under GS as defined by FRA 2006 and Rules

According to FRA 2006 sec 2(g) all the adult members of the village constitute the GramaSabha. That means any person or official not being member of the village don't have a voting power in the GS. At least 50% or more people with one third women are necessary for a valid and resolution Rule 4(3). This provisions extents greater democratic representation of people in any of the decision making process and it will be truly valid in ensuring the democratic integrity in decision making and management of resources.

The FRA 2006 and its Rules 2008 as amended in 2012 clearly defines two committee under the GS elected among its members to function as authorities in determination of rights, functioning of GS and management of Forest and Forest Resources.

1. The Forest Right Committee (FRC) : The FRC comprising a 10-15 members with two third women has to be elected first time in the first meeting of the GS by the Grama Panchayath (Rule 3(1)). They have to decide on a Chairperson and Secretary and intimate to Sub Divisional Committee (SDLC).

The duties and responsibility of the FRC members as per various provisions of the FRA (Rules 11 & 12) are chiefly helping the GS in regular functioning, claiming forest rights, its verification including survey of lands, processing of claims, preparation of lists and intimation to higher authorities in SDLC and DLC as well as to GS members. It is clear that the functioning of GS is not for a particular period or just for claiming rights but it has a long-term to help in regular functioning of

GS.

2. The Community Forest Resource Management Committee (CFRmC): It is a committee to execute sustainable management of Forest, Wildlife, Biodiversity and Catchments of streams as defined by Section 5 of the act. The Committee has a functional role once it constituted as per Rule 4(1)e). It is also clear that it has great responsibility to serve in the management of forest and forest resources within the CFR areas of the GS.

It is obvious that the action and positions of the members of these committees can be challenges by any of the GS members and can be changed with a majority decided valid resolution of the GS. Also GS can decide the frequency of period of one committee and its re constitution.

Definition of these two committees under GS in FRA and its rules don't vest any standalone powers on them unless it is backed by GS decision with valid resolution. This expand the possibility of real 'democratic' representation of people when compared to elected representative system followed various structures of the in Indian democracy.

Link with Panchayath Raj Institutions (PRIs)

Usually when the GS of a region attain special constitutional powers through declaration of Scheduled area the very next step is to link it with the Panchayath Raj institutions through Panchayath Extensions to Scheduled Area (PESA). In the particular situation of the Kerala state with a great minority of ST population (1.48%) compared to non STs has been a hurdle for Scheduled areas declaration and PESA. But the FRA 2006 extents constitutional powers to the GS of the Forest and forest resource dependent scheduled tribes since its inception in 2007 and it has become clear and evident after the rules 2008 and its amendment in 2012. It is very important to understand and vital link of the GSs defined FRA with the PRIs.

The listing and constitution of the GS under FRA, the most primary and significant part of process is vested with the Grama Panchayaths. It is the duty of the Grama Panchayath to list all list hamlets and villages Rule 2A(a), and convening of the Grama Sabha and elect the Forest Right Committee (FRC) as the functionaries in its first meeting Rule 3(1).

Also the Panchayath Secretary has been decided as the secretary to the GS similar to the GP (Rule 11(6)). His duty is to discharge the apart from the secretaries of the FRC and CFRmC.

Rule 4(3) – the Grama Sabha shall be provided with necessary assistance from State Government.

It is evident that the functioning of the GS as defined in the FRA is under the GP and the upper two tire of the PRIs such as Block Panchayath and District Panchayath members are there in the two higher authorities for conferring Forest Rights under FRA such as the Sub Divisional Committee (SDLC) chaired by sub district revenue officer usually sub collector and District level Committee (DLC) chaired by Collector. The role of the ST department is to initiate and monitoring of the process of FRA as a nodal agency. The powers in the SDLC and DLC are on all the officers representing Revenue, Forest, Tribal and Panchayath Raj institutions. The revenue officer has the power for final decision as chairpersons of SDLC and DLC if a difference of opinion arises in the committees. But any such decision shall only be based on the decision and resolution of the Grama Sabaha.

Violation of the rights

The functioning of other agencies through co-operatives, Self Help Groups, Forest Development Agencies etc in resource, land, forest and wildlife governance other than tribal GSs and their functionaries such as FRAs and CFRmCs will be a violation of rights. Ministry of Tribal Affairs clarified it through various guidelines, FAQs, and letters to all state governments and departments. MoTA wrote to the MoEF on October 21, pointing out that “no agency of the government has been vested with powers to exempt application of the act in portion or in full” and any alteration of an Act other than by an amendment passed in Parliament would not be legally tenable'. Operation of various such parallel bodies were regarded as important reason for weakening of tribal GSs, tribal empowerment and development.

So it is very important for all other departments, bodies and their functionaries to look into the matter seriously and restructuring of all programs in tribal areas is a necessity and directions has to be issued to all departments and officials. The LSGs has

to think about the powers of FRA Grama Sabhas also need to make provisions link its with Panchayath raj similar to PESA.

The Way ahead in the context of Kerala

The Government Order on the Oorukoottams (2003) or the tribal GS don't have a constitutional power, but it has been widely used and decisions have been made within Oorukoottams especially in the matters related to Tribal Sub Plan (TSP). There are many criticisms for functioning of Oorukoottams, its misinterpretations, false empowerment pointing to the fact that it has not being convened autonomously by the Tribal people within the hamlets. The members of the Oorukoottams are not empowered such a way to decide on their own will and interests. It is also reflected in keeping of minutes by ST promoter ward member etc. So that more than one minutes exist and functionaries of the Oorukoottams don't keep minutes or they are unaware of it resulting in overlapping and misplacing of many developmental activities and beneficiaries.

The 2003 GO not amended or attached into the Panchayath Raj Rules so far and also it has not modified according to the new central legislations extending powers to GS such as FRA 2006. Hence the TSPs under PRIs stand separate in functioning as well as powers of the GS/Oorukoottams as defined by FRA. The following suggestions can be taken into account for a synergic action of PRIs and ST GSs in compliance with legislations such as FRA.

1. The 2003 GO of the Kerala Government on ST Oorkootam/GS has to be made into part of the Panchayath Raj Rules with proper modifications in compliance with central legislations such as FRA as well as scheduling/PESA.

2. The definition of multimember committees as factories such as Forest Right Committee (FRC) has

been noticed in ensuring better democratic representation when compared to vesting of powers on one elected person. So the same committee can be defined as the elected executive committee of the GS in FRA applicable areas and similar structure can be evoked in other ST GSs (GS outside forest dependence).

3. The Oorumooppa or the Chief of the Ooru/ village can be a member or president of the Oorukoottam Executive Committee/FRC without any extra power vested on him.

4. A time period for the reconstitution of these committees can be defined to a maximum of three years unless the person is challenged by a member of the GS and effectively supported by the GS decision.

4. The quorum for a valid GS decision and resolution shall be greater than 50% of the GS members (all adult members) with at least one third members shall be women (Rule 4(3)) of FRA found to be very effective in democratic decision making and it can be adopted to ensure better democratic decisions as well as compliance with FRA.

5. The GS has to keep its minutes, make bylaw and accounts of their own and has to be kept at the GS office in the village handled by the functionaries. Other departments can have their own books and can record simultaneously with GS minutes while holding meetings.

6. GS can keep a database of the members including their socioeconomic status including list of beneficiaries of various programs. This can help to avoid overlapping of beneficiaries and also to ensure deserved persons get benefits.

7. All the projects implemented by Govt. and non government agencies need to get consent of the GS before the beginning of the projects and utilization certificate at the end along with an asset audit by the functionaries.

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