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Remarking An Analisation

From Forest to Field – Hope Amidst Despair

Abstract

Chhattisgarh is India's one of the most natural resource endowed state. The state also comprises of a significant percentage of tribal population. In a bid to become a developed state there is utilization of natural resources at a very fast pace. Land, water and forest have been significantly affected in the process of development. Tribals have often become the losers in the process of development and they have been further marginalized. Amidst such a scenario there has been a significant ray of hope by the residents of Mahangai village under Lathkur Gram Panchayat under Balrampur District (former Surguja District) in practically being successful in receiving the IFR¹ and CFR² rights in their area. Forest has been an integral part of the rural and tribal life. The recent Forest Right Act has been significant in theoretically and technically providing the right of forest to the forest dwellers. However, very little has been achieved in this direction. The present case is a testimony to the significant efforts of the People's Organization in fighting and receiving the IFR and CFR and achieving the Gandhian Concept of "Sustainable Development".

Keywords: Individual Forest Rights, Community Forest rights, PESA, Tribal, PRI, Gram Panchayat, Surguja.

Introduction

Forests and tribal community remain mutually dependent on each other and forests remain critical to the tribal's lives and livelihoods. Forests serve as an income source to the tribal demography by selling Non Timber Forest Products (NTFP's) such as Tendu leaves, mahua etc. They sell these products to the government promoted co-operatives and societies as well as private traders which provides them employment for up to 40 days in a year. Apart from cash flows NTFPs provide food security, medicines etc. to this tribal demography.

But the use of this forest land by the tribal communities have always remain a source of conflict whereby their legal rights are always questioned by the state and central government officials giving rise to a situation of eviction and insecurity rooted in our Indian Constitution. Violation of the land and forest rights leads to displacement of tribal people from their own land inherited by them since generations thus bringing erosion in their cultural practices and maintaining exploitative economic relations with the community and government authorities. Such economic marginalization of the indigenous tribal demography gave birth to The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA). This Act provides for access, own and management of forest and other natural resources by the Tribals. Individual rights over forest rights are for cultivation and community rights apply to cultural practices in livelihoods through sales and collection of NTFP's management of forest resources, water bodies etc. The Act provides for recognition and vesting of forest rights to the Scheduled tribes and to other forest dwellers that are in occupation of forest land for at least three generations i.e. 75 years up to a maximum of 4 hectares. According to the Act, no tribal can be evicted from forestland unless the recognition of forest rights is complete in that region. The most important part of this Act is that the rights are heritable, not alienable or transferable and gives the right to live in the forest land under individual or common occupation for habitation, cultivation for livelihood etc. Also the Forest Rights Act recognizes the right over "community forests resource" that it defines as customary common forest land within the traditional or customary boundaries of the village including protected areas (Patnaik). The Preamble of this Act is to recognize and vest the indigenous people's rights over occupation in forest land for the forest dwelling scheduled tribes and other traditional forest dwellers who are the actual inhabitants of this forests since generations but



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their rights could not be recorded to be provided as a framework for recording the forest rights. Section 2 of this Act defines "bonafide livelihood needs", "Forest Rights Committee", Claimant", "disposal of minor forest produce" in specific terms. Section 3 of the Act speaks of the rights which secures an individual or community tenure or both; shall be the forest dwelling scheduled tribes and other forest dwellers on all forest land namely:

- Right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood
- Community rights such as nistar by whatever name called
- Right of ownership, access to collect, use and dispose of minor forests produce which has been traditionally collected
- Other community right of uses or entitlements such as fish and other products of water bodies, grazing
- 5. Rights including community tenures of habitat and habitation for primitive tribal groups
- Rights in or over disputed lands under any nomenclature
- Rights for conversion of pattas or leases or grants issued by local authority or any state government on forest lands to titles
- Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests
- 9. Right to protect regenerate or conserve or manage any community forest produce
- 10. Rights which are recognized under state law
- Rights of access to bio-diversity and community right to intellectual property and traditional knowledge
- Any other traditional right customarily enjoyed by the forest dwelling scheduled tribes or other traditional forest dwellers.
- Right to in situation of rehabilitation including alternatives land

As per section (4) of the Act the central government recognizes and vests forest areas in the area declared as a scheduled tribe and other traditional forest dwellers in respect of all forest rights mentioned in section 3 of the Act. The forest rights recognized under this Act in critical wildlife habitats of National Park and Sanctuaries may subsequently be modified or resettled. Section 5 enumerates the duties of forest rights holders. The Gram Sabha and village level are empowered to protect the wildlife, forestry and bio-diversity to ensure protection of the catchment area ecologically sensitive areas and water resources etc. in section 6, authorities are procedure for vesting of Forest Rights whereby the Gram Sabha shall hold the authority to initiate the process for determining the nature and extents of individual and community rights or both may be given to the forest dwelling scheduled tribes and other traditional forest dwellers within the local links of its jurisdiction. Gram Sabha acts as a supreme body in passing resolutions for recognizing the rights; only then the claim shall be forwarded to the sub-division level committee and

thereafter will be submitted to the District Level Committee for final hearing (Salunke).

The 73rd Amendment to the Constitution led the enactment of PESA, Panchayat (Extension to Scheduled Areas) Act, 1996 through the transfer of powers to the Gram Sabha or the village assembly to manage the community disputes over resources, customs and traditions of the people. Census 2011 constitutes for 8.6% of the tribes in India's population. The high concentration of the tribal population in the Fifth and Sixth Schedule Areas has been described in our constitution as Schedule Areas and Tribal Areas respectively. The tribal demography is dependent on nature and composed of their own rich traditional culture and practices. Totally dependent on forests they also protect the flora and fauna of our very nature. They are enriched with their rich tribal social characteristics and democratic in nature (Sudipta, 2015). The governor enjoys extra-ordinary power of the legislation in the Scheduled Areas as the sole protector. He enjoys the freedom of amending the existing laws of the state or the center in contravention to the laws as prescribed in PESA. Under the Act Gram Sabha enjoys extra-ordinary power and its jurisdiction is pervasive in consideration to the wide range of issues which has direct or indirect bearing with the life of the tribal demography. The most crucial part of the Act may be viewed under the purview of preamble of Section - 4 of the PESA Act which prohibits the legislature of a state in making any law under that Part inconsistent with any of the features laid down in the central Act. As per the provisions in the Section - 5 which envisages that any provisions of a law inconsistent with the provisions of the PESA Act can only continue to be in force until amended or repealed by the State; otherwise it will automatically expire in one year from the date on which this central Act came into effect. So all the provisions in the laws of the concerned states and the state that are not in consonance with the basic features laid down in the Section - 4 of PESA are considered to be null and void. This ensemble the unique features of PESA Act (Rao).

The Act makes sure that each tier of the Local Governance is independent and Panchayats at the higher level should not act upon the powers and authority bestowed upon the Panchayat at the lower level. Upon formation of the Act, all the states with Scheduled Areas in India were instructed to amend their existing Panchayati Raj Acts incorporating the provisions of PESA within a year. Provisions under PESA include the following as below:

- Gram Sabha is to be formed at the para, majra and tola levels.
- It is the responsibility of Gram Sabha to protect and restore the cultural beliefs, traditions of the tribal communities.
- Local Disputes are to be resolved at the gram sabha level.
- The functioning of local markets, haats and melas come under the jurisdiction of Gram Sabha.

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The entire district Panchayats to enjoy equal power and rights similar to the district Panchayats falling under sixth schedule.

- Gram Sabha holds the full rights in prohibiting and manufacturing of liquor
- Gram Sabha enjoy the rights over minor forests 7. produce; power to restore land to the tribals; and control over money lending to the tribals, tribal welfare activities by social organizations and local plans for the development of tribal areas and communities.
- 8. The administration has to seek permission from Gram Sabha in cases of land acquisition.
- Gram Sabha holds the ultimate responsibility to manage and protect common properties based on the traditional systems of management and

The Act endows Panchayats with the powers and authority to function as institutions of selfgovernment and social justice. It provides radical governance powers for tribal communities to the tribal community and recognizes its traditional community over local natural resources. Further it accepts the validity of "customary law, social and religious practices, and traditional management practices of community resources" along with directing state governments to amend laws inconsistent with the same. The important objective is to protect the tribal population from exploitation by crafting GramSabhas as centers of self-governance. Far more it is the most progressive legislation for the tribal zones recognizing the tribal rights of the indigenous communities over the natural resources. PESA empowers Gram Sabha to intervene in approval of developmental plans and programs related to Land Acquisition as well as rehabilitation of affected demography simultaneously managing the minor forest produce. Under the FRA Act, the Gram Sabha is the only authority empowered to decide the future of traditional tribal lands. FRA does not bestow revocation of either community or individual land rights once granted under the law. Law and regulations provide only for the government diverting the forest land to be used for some other purposes after prior consultation and consent from the tribals through their Gram Sabha. FRA also requires that the claims and rights of the tribals and other forest dwellers to be settled before the government take any action to remove them under Section 4(5) of the law and other rules (Sethi).

Introduction of PESA Act may have ascertained FRA with synergy as per the provisions laid but the inadmissible attitude and unwilling attitude of the forest government officials, bureaucratic approach and inadequate efforts at the end of respective state governments have been a witness to the slow implementation of this Act in some of the states.PESA Act remains influential in recognizing for people's rights and defining the role of admissible evidence. Simultaneously FRA plays an instrumental role in laying down the transparent process of recognizing the rights whereby GramSabha plays a central administrative role. The process gets a setback when the government officials impose their own diktats avoiding the procedural law. In the states

of Andhra Pradesh, Chhattisgarh etc. where the demography is mainly tribal and too large, the Gram Sabha meetings are held at the Panchayat level which thereby violates the laws meant for Schedule V areas. Moreover the claims made by the indigenous tribal people get rejected due to bureaucratic reasons or others. Simultaneously such implementation does not vide well when it comes to the forest dwellers. Only the state of Andhra Pradesh followed by Chhattisgarh have been instrumental when it rates the percentage of claims being verified and distributed to the actual owners as per the regulations laid down in PESA & FRA Act. It is the Chhattisgarh state followed by Madhya Pradesh who receives the highest number of claims but the success percentage remains abysmal in Madhya Pradesh, Odisha, Jharkhand and Maharashtra.

Status of Pesa, Fra in Chhattisgarh

Chhattisgarh, India's new state carved out of Madhya Pradesh was constituted on 1st November is home to some of the most marginalized tribal communities. The state is gifted with rich forests covering almost 44 percent of its total area and eighty percent of Chhattisgarh's population lives in rural areas and 32 percent is tribal. The notified Fifth Schedule Areas of Chhattisgarh state covers 19 districts under the PESA Act. However 13 districts namely Bastar, Korea, Sarguja, Surajpur, Balrampur, Dantewada, Korba, Jashpur, Sukma, Narayanpur, Kanker and Kondagaon are fully covered under the purview of PESA act while 6 districts namely Dhamtari, Raigarh, Rainandgaon, Bilaspur, Gariaband and Balod are partially covered under the same. There are total of 85 PESA Blocks with 5050 Village Panchayats and 9977 PESA villages in the whole state of Chhattisgarh.

Chhattisgarh government is yet to frame its PESA rules. In compliance to the concerned state subject laws with that to PESA, the state has made substantial progress and moreover it has made its Panchayati Raj compliant with the section - 4 of PESA Act which can be summarized as under:

4(d)

Customary mode of conflict resolution by the Gram Sabha:

4(e)

Selection of program beneficiaries by the Gram Sabha:

4(f)

Gram Panchayat in obtaining Utilization Certificate from the Gram Sabha;

4(h) Nomination by state government of persons of ST not represented in intermediate and district

PRIs: 4(i)

Consultation with Gram Sabha or PRI before land acquisition, resettlement & rehabilitation;

Planning & Management of water bodies by Gram Sabha or PRI;

4(k)

Recommendation by Gram Sabha or PRI before grant of prospecting license or mining lease;

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4(I)

Recommendation by Gram Sabha or PRI before exploitation of minerals;

4(m)(i)

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Power to restrict sale of intoxicant to PRI and Gram Sabha

4(m)(iii)

Power to prevent land alienation to PRI and Gram Sabha

4(m)(iv)

Power to manage village markets to PRI and Gram Sabha;

4(m)(vi)

Control of social sector institutions & functionaries to PRI and Gram Sabha

Section 4(i)

The Gram Sabha or Panchayats at the appropriate level shall be consulted before acquiring land in the Scheduled Areas for development projects before resettling rehabilitating persons affected by such projects in rural areas.

Chhattisgarh government has made provisions that before acquisition of land for developmental projects, Gram Sabha of respective areas are to be consulted. Section 4(k) - the recommendations of Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to the grant of prospecting license or mining lease for minerals by auction.

To take care of the above section Chhattisgarh government has made it a mandate that Gram Sabha is to be consulted.

Section 4(I)

The prior recommendation of Gram Sabha or the Panchayats at the appropriate level is mandatory for grant of concession for the exploitation of minor minerals by auction

In respect to the above The Government of Chhattisgarh is yet to make any such provisions

Section 4(m) (ii)

The ownership of minor forest produces.

The Chhattisgarh State Federation of minor forest produce is empowered to control trade ad must distribute dividend and bonus to the shareholders.

Section 4(m) (iii)

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.

The Act itself confirms for Gram Sabha being endowed with such powers.

But Chhattisgarh government is yet to comply with two provisions mentioned under the PESA Act as under:

4(m)(ii)

Ownership of Minor Forest Produce to PRI and Gram Sabha

4(m)(v)

Control over money lending to PRI and Gram

(Brief Note on PESA for the state of Chhattisgarh)

Objectives of The Study

1. To explore the implementation of IFR under the PESA Act in the area of study Chhattisgarh

2. To access the extent to which devolution of power in FRA under PESA Act has taken place in Mahangai village of Lathkur Gram Panchayat

Research Design

The study has been carried out in the Mahangai Village under Lathkur Gram Panchavat of Balrampur district in Chhattisgarh. Village has been selected based upon the indigenous people's struggle for ownership rights over forests. The major demography of the village i.e. Oraon (Schedule Caste) and Kaser (OBC) with around 150 families and 240 ration card holders has been chosen as the sample respondents.

Exploratory research design and standard anthropological methods have been used for collecting information in the studied area. Observation method and focus group discussions have been conducted to develop a better and deeper insight about the perception of tribal demography in context to Forest Rights Act and their struggle to acquire the ownership of forest rights on individual and community level against the state government. Participatory Rural Appraisal techniques like resource mapping, social mapping, etc. were used to collect the information from the respondents. A detailed review of the literature and research findings pertaining to FRA in Chhattisgarh state has been undertaken. Software database like JSTOR, Springer, Francis & Taylor etc. will be applied to enrich the research study. Use of these resources from licensed credible sources enriches the credibility of the findings of the research

Profile of Area of Study

Mahangai village is settled amidst the cradle of forest. The village is surrounded by hills. Saso hill in East, Mahan hill in west, a few more hillocks like Dhodikhona Pahad³ and Machakola Pahad add to the beauty of the village. The village has rich forest comprising of trees like Tendu, Mahua, Harra, Behera, Tamrind, Mango, Jamun, Guava, etc which form an integral part of the livelihood of the people. The major livelihood options for the people in the region are collection of NTFP4, cultivation of Paddy and Maize crops. The village receives water from a small stream passing through the forest named as Ambakona Nala. The residents of the area are completely dependent upon forest for their survival.

The people came and settled in the area during the rule of Shri Ambikeshwar Singh Ji, the then King of Ambikapur (In 1942-43). People recall that they had come from a place named Sitapur and had settled in this area. During that period around 40-50 families had come and had settled in this area. The majority of people are Oroan (Scheduled Tribe) and Kaser (OBC). Today there are around 150 families and 240 Ration Card Holders in the village.

Challenge

The life of the people in the area as discussed above has been intrinsically related with forest. The struggle for ownership over forest has been a very long one. Since past 30 years the people in the region had collectively started their struggle to acquire the ownership of forest rights on individual as well as on a community level. The people had initially

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made a representation during 1980s when Shri Ramdev was the MLA from the area. The same was also forwarded to the respective departments in Bhopal (the then capital of undivided state of Madhya Pradesh comprising of the present day Chhattisgarh state) and also at central level to respective offices in New Delhi.

The irony of the people was that the Rangers and Darogas said them that they are not in forest village and the collector office said that they are not in Revenue village. It was a big setback for the residents who had been living here since pre-independence days. No development activity could take place in this village. Since the people did not have Patta⁵ they could not avail benefits like getting fertilizers and seeds from government stores, houses under IAY6 and getting caste certificates. Getting ownership over land was a major challenge and led to further marginalization as development schemes could not be implemented in the area. However the people have been casting their votes since beginning and the voter Identity card illustrated their village as Van Gram⁷. These factors led to desolation of the people and they wanted to get title over land and forest under IFR and CFR. There was despair among the people.

Intervention

People's Organization came forward and collected the people together. It conducted several knowledge building sessions on FRA8 among the people. The People's Organization is working since past 12-13 years on this issue. The matters related to IFR and CFR were discussed in the community. The people voluntarily decided to collect a sum of Rs. 10/on an individual basis to meet out the expenses involved in sending applications and making representations before various state bodies to justify their request.

On 05^{th} January 2014 the People's Organization through participatory approach drew up the detailed village development plan for village including the details of lights, taps, schools etc. To undertake these developmental schemes there was need to first recognize the village as forest village and then transfer it as revenue village. The people further collectively organized themselves and through the democratic approach called for a special Gram Sabha on 15th January 2014 to resolve that Van Gram Mahangai be declared as Revenue village Mahangai.

On 25th Januray 2014 in the Scheduled Gram Sabha the resolution on transfer of Van Gram Mahangai as Revenue village Mahangai was accepted. Around 450 hectares of land was transferred as revenue land. It was a major mile stone of success for the people. Around 221 people have applied for IFR and 12 people have received IFR. People are highly thankful to People's Organization for their support in capacity building and sensitizing the people on the issue of FRA, IFR and CFR.

Conclusion

People have already prepared the Micro Plan for village development and are now eagerly waiting for schemes under MGNREGA⁹ and BRGF¹⁰ to be applied for development of the area. They are

highly thankful to the People's Organization for paving them on the road of sustainable development.

FRA proposes to do away with the injustices over the tribal indigenous people living in and around the forests and rural zones since generations. It gives power to the people not only for using their resources but also for their conservation and protection. But passing a law doesn't change the ground reality because still these communities are facing hardships in issues right from formation of village level forest rights committees to their rejection in presenting valid proof documents, delay in granting of rights and claimed land etc. Ministry of Tribal Affairs presents some sort of hope in the tribal dominated zones picking up the issues with state and central level government authorities to uphold FRA and PESA. As per the Act, there stands a system of monthly reporting on the implementation of Act by the respective Governments but only states do follow the protocol. As per the Statistics by Union Ministry of Tribal Affairs, in Chhattisgarh state there have been 8.52.530 individual claims received as on date 31st October 2017 of which 3.86,206 titles were distributed. In context to community forest rights, 27,548 claims were received and 14,161 claims were settled (Menon). The Gram Sabha or Panchayats at the appropriate level is to be consulted before making the acquisition of land in the Scheduled areas for developmental projects or rehabilitating persons affected by such projects. However mere consultation with Gram Sabha is not enough and needs to be restructured. Land for land must be a fundamental requirement for acquisition of land in tribal areas and it is to be cultivable and safeguard of tribal is necessary to ensure that the tribal demography are not alienated from their cultural moorings and comfortzone. Merely monetary compensation shouldn't be pre-requisite. The record of land maintained by the revenue official at the village level should be placed annually before the Gram Sabha so that people are well informed and aware about its contents and take measures for rectification or improvisations. FRA and PESA if implemented successfully may be helpful in combating social exclusion of tribal indigenous demography and catalyze social change in bringing the world together prospecting respect, alliances and genuinely connected in mutual terms.

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Footnotes

- 1. Individual Forest Right
- 2. Community Forest Right
- 3. Local name for hillocks
- 4. Non Timber Forest Produce
- 5. Title Deed for land ownership
- 6. Indira Awas Yojna
- 7. Forest Village
- 8. Forest Rights Act
- 9. Mahatma Gandhi National Rural Employment Guarantee Act
- 10. Backward Region Grant Fund