



Tribal Ethos and Economics Research
जनजाति जीवनतत्व व आर्थिकी अनुसंधान केंद्र

Research/Study commissioned by: National Commission for Scheduled Tribes, Govt. of Bharat

Principal Investigator: Milind Thatte milind@teerfoundation.in

Study conducted by: TEER (Tribal Ethos & Economics Research) Foundation

Citation: Th Milind, Evaluation of implementation of CFRR and PESA, TEER 2022

Executive Summary

This research on community forest resource rights (CFRR) happens to be in the 16th year of FRA implementation and in the 26th year of PESA implementation. Both laws have sought to reconnect with pre-colonial Bharatiya systems of decentralised governance. Communities with symbiotic relations amongst humans as well as between humans and nature are recognised as primary stakeholders in PESA and FRA and are expected to be handed over power to govern natural resources as Gram Sabhas.

The research was conducted in four states that are home to majority tribal population in the country viz.; Madhya Pradesh, Chhattisgarh, Maharashtra, and Rajasthan. The erstwhile body of research was mostly academic relying on reports published by the governments and through interactions with civil society. This research involved examination at each level of the process of recognition of forest rights; including government committees at sub-division, district, state levels, and the villagers.

Community Forest Resource Rights (CFRR)

The findings of this research are varied for all four states, but there are certain general pointers as well. Following are the five major pointers about CFRR-FRA:

First, CFRR are negligibly recognised. There is complete lack of understanding or bureaucratic resistance to recognising such rights in the states of Rajasthan and MP. This is at the state level and has clear percolation to the frontline officials. Maharashtra has recognised a good number of CFRR, but the area is smaller. There are evidences of arbitrary reduction of traditional boundaries of claimant villages.

Second, recognition of CFRR must be followed by handholding support by government. Chhattisgarh has an exceptionally high number of recognitions of these rights quite recently. It remains to be seen how the state provides handholding support. Maharashtra has set many precedents of such support to Gramsabha thus strengthening its institutional capacity and income levels of Gramsabha and its members. But the state also has cases of Gramsabha authority over MFP being challenged and hijacked by government officers.

Third, the state forest department (FD) in Maharashtra has not recognised nor accepted its new role. The FD should be technical and financial support provider

of Gramsabhas protecting and managing the CFRR. The FD has effectively shrugged its shoulders and is neglecting that the CFRR is also a forest and is intended to remain a forest. The FD has neither provided any funds nor technical support nor has it proactively shared its working plans/ micro plans with Gramsabhas that are now entrusted with the responsibility to manage these forest areas. The FD in Chhattisgarh as we found was a step behind that of Maharashtra, because they were yet to realise this phase was coming after widespread recognition of CFRRs in the state. The FD of MP and Rajasthan are continuing to hold to the colonial mindset that people are enemies of forests and that they shall destroy the forest once it is handed over. The FD in these two states is giving sanctions to forest diversions in sec 3(2) and also to usufruct rights under sec 3(1), but are not taking any action in the process of recognising CFRR where the responsibility to protect will also be with the people in Gramsabha.

Fourth, the states are still avoiding recognition of CFRR in so-called Protected Areas. Tiger Reserves were hastily declared slightly before the passage of FRA. Maharashtra has cases where villages were lured to accept 'voluntary relocation' and revenue farmlands as well forest rights were diverted for tiger reserve. The aggrieved tribal farmers have filed a court case. Chhattisgarh has kept CFRR claims in tiger reserves pending. MP has not even admitted any claims of CFRR anywhere.

Fifth, the states have not effectively taken up the process of updating the record of rights and consolidation of forest and revenue maps. This is expected to be taken up within three months of disbursement of titles, but even after years of recognition this is not done. This research team could not get even a single copy of updated forest records showing CFRR as a category of forests with clear boundary demarcation. This can become a seed for big disputes in near future.

Provisions of Panchayats Extension to Scheduled Areas Act (PESA)

The second aspect of this research was the implementation of PESA in these four states. Our findings on PESA had following four general pointers:

First, the states have failed to notify the hamlet (phalya/pada/tola) as the Gramsabha. This basic failure has rendered ineffective PESA as well as Panchayat Raj as systems of 'self-government'. Our interactions with villagers in all four states provided ample evidence of traditional village assemblies being functional and effective. And we found in the same villages that Panchayats continued to hold Gramsabha meetings at Panchayat offices with fake attendance and nil participation. PESA wanted the Gramsabha to move to the natural village where traditional assembly is still alive. This the states have miserably missed.

Second, the states have given the Gramsabha neither funds nor functionaries. The Gramsabha in current scene is a mere talkative vacuum. To quote a GP secretary in one of the states: "people know well that Gramsabha is only a *naatak*, government above takes away whatever resolution it wants". This has

turned people away from the institution of Gramsabha and has helped bureaucracy build the façade of people not being interested in Gramsabha. Maharashtra has provided 5% of TSP funds to Gramsabha for last six years. And there are examples of vibrant Gramsabhas; with full participation of people and full utilisation of this fund with a commendable level of transparency. The secret lies in the pre-existing trust between people who sit in a small hamlet Gramsabha. The village Panchayat or higher Panchayats are devoid of such mutual trust and interdependence. Small Gramsabhas could bring a paradigm shift towards transparent and efficient utilisation of government funds. ‘Small is smart’ – is a mantra no state has learnt so far. As a senior bureaucrat said to our PI, “how can we manage so many small Gramsabhas?” – the bureaucracy has not understood that they are not expected to ‘manage’ the small Gramsabha. It shall manage itself. It already does.

The PESA rules in Maharashtra promised that there shall be training of Gramsabha committees within one year of the rules. This never happened. Other states have not even raised a promise. A Gramsabha without committees i.e. functionaries can barely exercise its rights.

Third, the state must amend its laws to comply with PESA. This is a constitutional requirement which is not taken seriously by states. MP, CG, and Rajasthan have repeatedly mentioned in their PESA provisions that it will be within limits set by other laws of the state. The states have not accepted that PESA is intended to bring a shift from colonial regulatory regime to people-centric Bharatiya traditional self-government. The then Hon’ble Governor of Maharashtra has used his powers under the Fifth Schedule and has amended many state laws as well as the Indian Forest Act in their application to Scheduled Areas to comply with PESA. No other state Governor has used these powers.

It was only in the current year that CG and MP notified PESA rules and brought certain changes. But there is space to improve in the provisions about MFP like Tendu and Bamboo.

Fourth, PESA is a law and not a scheme that is to be implemented for a short period. It is obviously necessary that the Government has an office and a hierarchy that is specifically charged with PESA implementation. None of the states has any state level nodal officer for PESA. There were temporary appointments of block and district coordinators under RGSA, but no permanent office that monitors PESA in the state. Maharashtra has quite recently appointed a PESA director at the state, but the results are yet to be seen. Lack of a dedicated nodal agency for PESA is also the reason for lack of training to officers and government staff that are posted in scheduled areas.



Full report may be availed by Indian citizens by writing to:
National Commission for Scheduled Tribes,
6th Fl, Khan Market - New Delhi