Working of Gram Sabha in Scheduled Areas
under PESA Act-Odisha Perspective

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Abstract

The present paper attempts to examine the role of Gram Sabha in the functioning of PESA Act and is based on the study undertaken by the Institute of Social Sciences, Bhubaneswar. The present paper tries to examine working of Gram Sabha in schedule areas in respect of (i) control over money-lending, (ii) matters of prohibition or regulation or restriction of the sale and consumption of intoxicants, (iii) ownership of minor forest produce (MFP), (iv) land transfer (v) regulation of village market. These issues were approached by administering household questionnaire, conducting FGDs, interviewing PRI functionaries, officials and non-officials and field observation.

Odisha is located between 17 N and 22.3 latitudes and between 81.3 to 87.5 E longitudes and represents a State situated on the coast of Bay of Bengal, which is surrounded by Andhra Pradesh in the south, Bay of Bengal in the east, Chhatisgarh state in the west, West Bengal and Bihar states in the north. Odisha has a landmass of 1,55,707 sq. km. with 3.68 crore population as per 2001 census and now at 4.19 crore as per 2011 census. The density of population increased from 236 per sq. Km in 2001 to 269 per sq. Km in 2011. In Odisha, literacy rate has increased by 4.6 times from 15.80 per cent in 1951 to 73.45 per cent in 2011, growing at an annual compounding rate of 2.59 per cent as against 2.35 per cent per annum at the national level. Whereas male literacy has increased 3.02 times from 27.32 per cent in 1951 to 82.40 per cent in 2011, female literacy has grown much faster (i.e., 14.24 times) from a low base of 4.52 per cent in 1951 to 64.36 per cent in 2011.

The population of Scheduled Tribes (ST) and Scheduled Castes (SC) in the state is 9590756 and 7188463 respectively (2001 census). The ST population constitutes 22.84 per cent of the total population of the state and 9.19 per cent of the total tribal population (104281034) of the country. The SC population constitutes 17.1 per cent of the state and 3.6 per cent of the total SC population of the country. Considering the development index, the President of India, during 1956 declared 62 different tribal communities of Odisha as scheduled tribes out of which 13 are considered as Primitive Tribal Groups (PTG) redesignated as Particularly Vulnerable Tribal Groups (PVTG) for special treatment. The scheduled tribes in Odisha speak as many as 74 dialects.

With the passing of the 73rd Constitutional Amendment in 1993, the Panchayati Raj Institutions secured constitutional status but this
amendment did not apply to Scheduled Areas under Article 244 of the constitution. The Panchayats Extension to Scheduled Areas Act (PESA Act), 1996 envisages the establishment of village Panchayat as self-governing institution. The basic provision of the PESA is aimed at facilitating participatory democracy in tribal areas by empowering the Gram Sabha to manage and control its own resources. The Gram Sabhas are given special functional powers and responsibilities to ensure effective participation of tribal communities in their own development in harmony with their culture so as to preserve/conserve their traditional rights over natural resources. The Act is intended to restore primary control over natural resources including land, water, forest, minerals and bestow ownership rights of Gram Sabha over Minor Forest Produces.

In the amended legislation the following subjects and responsibilities mandated for Panchayats in Scheduled Areas were entrusted to the three-tier Panchayat Institutions in Odisha. Gram Panchayat is given the power of (i) Enforcement of Prohibition of regulation or restriction of sale and consumption of any intoxicant, (ii) Ownership of minor forest produce, (iii) Prevention of alienation of land and restoration of any unlawfully alienated land and Scheduled Tribes, (iv) Control over money-lending and (v) Management of village markets. At the intermediate level, the power of control and supervision over institutions and functionaries of various social sector programmes and preparation of local plan including tribal sub-plan are entrusted to the Panchayat Samiti. Matters relating to grant of prospecting license or mining lease of minor minerals or concession for exploitation of minor minerals by auction and acquisition of land for development projects or resettlement or rehabilitation of persons affected by such projects are kept at the level of Zilla Parishads. In these matters, prior recommendation and consultation respectively of Zilla Parishad is mandated under the law.

The writings and findings from some authentic literatures provide enough scope for the relevance of present paper on “Working of Gram Sabha in Scheduled Areas under PESA Act- Odisha Perspective”. These reveal the existing practices of functioning of Gram Sabha in Scheduled Areas under PESA Act. Some related studies undertaken by different researchers and institutions like the Study on “Impact of State Legislation on the Empowerment of Gram Sabha in Scheduled V Areas” undertaken by NIRD study team tried to assess the impact of state legislation on the empowerment of the Gram Sabha (self-governance) and the levels of awareness of people and their consequent participation in the deliberations in Gram Sabha. Another study by the team on “Gram Sabha and Social Audit in Schedule V Areas”, focused on the analysis of ‘social audit role’ of the Gram Sabha in the framework of the provisions of PESA in the Schedule V Areas. The ‘social audit’ concept broadly envisages the exercise of these powers by the Gram Sabha effectively. M. Aslam in his article on “Empowering Gram Sabha: Heart and Soul of Panchayati Raj System in India”, suggested some necessary steps for creating conditions, which are conducive to the process of self-governance at the grassroots level. K.K. Patnaik in his article on ‘Gram Sabhas in Scheduled V Areas’ pointed out some gaps and suggestions in regard to functioning of GS and role of GS in Scheduled V Areas. He mentioned that PESA Act provided for the Gram Sabha or the Panchayats at appropriate level to be consulted or its prior recommendation obtained before performing any action on the aforesaid subjects but many states including Odisha exercised their option to entrust such powers
either to the Gram Sabha or the Gram Panchayat or any other tier of Panchayati Raj Institutions.

**Money Lending**

The Odisha (Scheduled Areas) Money Lenders’ Regulation 1967 has been amended by the Odisha (Scheduled Areas) Money-Lenders (Amendment) Regulation, 2000 (Regulation 1 of 2001). As per amended regulation, no money-lender shall advance loan to any person belonging to a scheduled tribe, except on the prior recommendation there of the concerned Gram Panchayat accorded with the concurrence of the Gram Sasan. A money-lender, before advancing a loan to any person belonging to a scheduled tribe, shall send the proposal there for to the concerned Gram Panchayat for its recommendation which shall be communicated by it within a period of 45 days from the date of receipt of such proposal. If the Gram Panchayat fails to communicate its recommendations or refusal within the aforesaid period, it shall be deemed that the Gram Panchayat has accorded recommendation. If it refuses to accord required recommendation, it shall communicate the reasons there for in writing, to the money-lender (Section 7-A).

It is revealed from the study that (i) people are not aware about rules regulating money lending and role of Panchayat there in particularly under PESA Act. (ii) Money-lending, with verbal understanding is prevailing among the friends and relatives. (iii) Loan is secured either in the form of kind (paddy) or in cash. In case of kind, the rate of interest goes as high as 50% and 20% in case of cash loan. (iv) People also take loan from SHGs. (v) People also depend on cooperative societies (LAMP) for purchase of fertilizers and manures. The study reveals that the impact of money-lending by licensed money-lenders under the money-lending Regulations is now minimal due to induction and entry of micro-finance institutions and functioning of SHGs. However, personal loaning is still in force.

**Consumption of Intoxicants**

The Bihar-Odisha Excise Act 1915 has been amended in 1999 (Act 2 of 1999). As per the amended provision, no license could be granted in the scheduled areas for manufacture, possession or sale, or any exclusive privilege for manufacture or sale, of any intoxicant, except with the prior approval of the concerned Gram Panchayat accorded with the concurrence of the Gram Sasan. The authority granting license for the above purpose shall refer every proposal to the concerned Gram Panchayat for its decision within a period of 30 days from the date of receipt of such reference. If the Gram Panchayat fails to communicate its decision within the period of 30 days, it shall be deemed that the concerned Gram Panchayat has accorded the required approval.

The key findings of the study are (i) Gram Sabha is called for discussion on opening of liquor shop. Resolution is sometimes passed against people’s opinion. Sarpanch imposes/forces upon ward members to sign-such resolution on the pretext of securing pension or any other benefit. Ward members sign without knowing/reading the contents of the resolution. (ii) Illegal liquor shops are opened with the knowledge of Sarpanchs. Licensed liquor shops are opened without the knowledge of people. (iii) Some Sarpanchs are reportedly not sending consent letter within 30 days as stipulated under rules for opening of liquor shop. (iv) Even some of them appear to be not knowing about the procedure of opening of liquor shop. (v) Even some of them might be deliberately causing delay in sending reply within the stipulated time. (vi) On this score, it speculated that they might be influenced by monetary benefit from the liquor-license applicants. On the whole, people
and elected representatives are not aware about the detailed provisions of PESA Act.

**Minor Forest Produce**

As per Odisha Gram Panchayat Minor Forest Produce Administration Rules, 2002, Panchayats are to regulate collection and trading of MFP vide Gazette Notification No. 2091, dated 15.11.2002. The GPs were given overall responsibility to regulate collection and sale of as many as 68 items of MFP. One more item has been added to the list thereafter. The main objectives behind making such legal provisions were to ensure payment of fair price to MFP collectors for their produce, develop a marketing network for trading in MFP, regulate and control activities of traders in order to reduce monopoly of middle men in MFP trading and check exploitation.

It was found from the study that (i) people are not aware of MFP rules. (ii) Traders of MFP do business without registering their names in the Gram Panchayat concerned. (iii) In most of the cases price is fixed by the traders. Since people are not aware that prices are to be fixed by Panchayat Samiti (uniform price), they offer goods at traders’ price. MFPs are sold without following the price-list fixed by Panchayat Samiti and displayed in GP office. So at times, the primary gatherers of MFP sell the products at a cheaper rate as dictated by the traders. The primary gatherers in some areas sell MFPs at a price than the price fixed at Panchayat Samiti level which is too low. Suo-motu registration of traders for trading in MFP is very less. Functionaries in weekly market inform, convince and mobilize for registration of traders with the GP concerned. (iv) The role of GP has been limited only to registration of traders and collection of registration fee of Rs.100. Beyond this, they don’t monitor the activities of the traders in procurement of MFP in the Panchayat area. (v) GPs don’t perform this because they claim that they have not been provided with appropriate power to control MFP trade. (vi) If the primary collectors and SHGs collectively bargain with the traders for fair price, then the traders stop coming to the area for buying MFP. There is no alternative buyer arrangement available to help the primary collectors to sell their products. It is very difficult to monitor the activities of the traders as they don’t report to the GPs from where they are buying, what quantity and where they are storing the produces etc. No reports on the prescribed format are being submitted to the Gram Panchayat by the registered traders. GPs have not taken any action against them yet. (vii) Fixation of price is not done in time by the Panchayat Samitis and after fixation of prices, it is not properly disseminated to the GPs. (viii) The GPs also don’t take appropriate measures for informing primary collectors on the price fixed.

**Land Transfer**

One of the main features of PESA is to prevent alienation of land and restore unlawfully alienated land of schedule tribes. Although Odisha Scheduled Area Transfer of Immovable Property (OSATIP), Regulation 2 of 1956 has been in force, it has come to the notice of the government that large-scale alienation of tribal land to non-tribals has been made in the scheduled areas of the state and as such, it had become a matter of great concern for the State Government as well as the Government of India. Amended Regulation of 2000 emphasizes on the fact that such transfer of immovable property shall take place among members of STs and not in favor of any non-ST person. Further, the total extent of land for such transfer was enhanced from minimum one acre to two acres in case of irrigated land and five acres for non-irrigated land. A non-tribal man married
to a tribal woman shall not be eligible for transferring land under this clause. The amendment contains various executive instructions for effective implementation of the Regulation. As per the amended provisions of the said regulation, transfer/alienation of land of STs to persons not belonging to STs has been completely banned. Any such transfer shall be null and void if the same has been made without written permission of the competent authority. In case any transfer has been made in contravention of the provisions in the Regulation, the competent authority either suo-motu or on a petition filed on that behalf, shall declare such transfer as illegal and shall restore the land to the lawful land owner or his/her heirs following the prescribed procedure. The regulation also provides for eviction of persons in forcible occupation of land belonging to members of STs and restoration thereof. The regulation provides for penal action in respect of illegal transfer as well as unauthorised occupation. The study findings show that (i) transfer of land in form of mortgage between tribals is still continuing on verbal understanding. (ii) Land transfer from tribal to non-tribal has been stopped since 2002 by amending 1956 regulation. (Regulation-2). (iii) People are aware about the ban of land transfer from tribal to non-tribal. But between tribals, the conditional transaction of land was not known to people. This needs to be disseminated further. (iv) It is noticed that restoration is done in pen and paper only. In most of the cases, the land remains with the second party (non-tribal) only. Physical possession of restored land is actually not given effect to. (v) As per the report given by functionaries, GP is not intervening in any land issues. They are not aware about the role of GP in resolving land related issues.

Village Market

The management of village markets is an important task assigned to the Panchayati Raj Institutions under PESA. Village market normally exists in every GP. It is revealed in the present study that market is regulated either by Panchayat directly or by Panchayats through auction or by cooperative society or by RMC. GP markets are invariably put to action. They are regulated and controlled by Gram Panchayats. In some Gram Panchayats, markets do not exist. Therefore, people depend on neighboring markets beyond the GP’s area.

Conclusions

The following suggestions were emerged from the opinions of various key stakeholders and study results:

- Extensive training and awareness programmes should be undertaken at block and GP level.
- Elected representatives of PRIs should be given intensive training on PESA Act and role of Gram Sabha for effective implementation of the Act.
- WEOs should identify the illegal money lenders and bring to the notice of the concerned BDOs/sub-collectors for taking action against them.
- The MFP price determined at Panchayat Samiti level should be communicated to Panchayats regularly by a specific date and month in lease year. Price list should be displayed at Panchayat office and public places including village markets. Monitoring by Panchayat functionaries is highly needed to identify the traders doing business without registering with Panchayat. If any such case is detected, he should be penalized. The Gram Panchayat should be empowered to take legal action against illicit liquor business.
- Local leaders should be vigilant when the process of opening of liquor shop starts. The
opinion of Gram Sabha on liquor license should be binding and absolute.

- Close monitoring is essential to stop transaction of land transfer between tribals which is still prevailing on verbal understanding.
- Market infrastructure should be developed. Markets under the control of RMC should be transferred to the Gram Panchayats.

References:


Footnotes

1Study on “Implementation Status and Gap between Provisions and Practice of PESA Act : A Comparative Diagnostic-cum-Evaluation Study” was undertaken by the Institute of Social Sciences, Bhubaneswar during 2012 supported by SCSTRTI, Bhubaneswar.

The study covered 4 districts, 8 blocks, 16 GPs, 130 villages and 1528 households. Nabarangpur, Sundergarh, Keonjhar and Kandhamal districts of Odisha were selected for the purpose.

This study was empirical in nature. Data was collected from both primary and secondary sources. Primary data included (i) Household survey (ii) FGD (iii) Semi-structured/informal interviews with the key stakeholders like elected Panchayat representatives, officials, NGOs/CBOs, Village leaders and cross-sections of society (iv) case studies (success/failure) (v) Field Observations.

Secondary data was collected from published/available records of Census of India, PR Department and Directorate of Economics & Statistics, Government of Odisha, GPs, Blocks, Zilla Parishads, ITDAs/Special Projects/Revenue/Block authorities/offices and other published/ unpublished reports.

The qualitative aspect of the study was assessed with the help of statistical tools like (i) Likert Scaling Technique(LST) with slight modification (for the purpose of the present study) adopted to assess the qualitative variables by putting score value. (ii) Regression and Corelation models were used to establish relation between the variables (significant/ insignificant).

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