

Gram Sabha as a Body Corporate The Emerging Reality

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Although the term “gram sabha”

Constitution (73rd Amendment) Act, 1992, the institution of the gram sabha has assumed significance as a basic unit of self-governance but there are a lot of misconceptions about its nature, and it is merely understood as a “meeting of village people.” However, in the Scheduled Areas of Gadchiroli district of Maharashtra, the gram sabhas are demonstrating how they could function as “bodies corporate,” a fact recognised only by a few of the state panchayat acts. This has got a great transformative potential not just in ushering participatory democracy but also in livelihood generation, conservation and management of natural resources.

Since the passing of the

misconceptions and confusions about it. First, although it is clearly stated that the gram sabha is a “body” of persons, in actual practice, it is construed as nothing but a meeting or assembly (*sabha*) of villagers. This mistake is made by both—the common people as well as the policy makers and executives. Second, the respective acts define the gram sabha as

attention to the issues discussed in this article and Keshav Gurnule of Srishti for supplying the information on Kurkheda taluka.

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was known to Indians for hundreds of years, it received due recognition only after the ratification of the 73rd Amendment to the Constitution. Prior to that, the Bombay Village Panchayats Act, 1958, which was one of the pioneering acts in this regard, had defined gram sabha as “a body consisting of persons registered in the electoral rolls relating to village comprised within the area of panchayat.”¹ The 73rd Amendment Act in 1992 retained this definition when it stated that the “gram sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.” As “panchayats” is a state subject, the respective state governments were asked to amend their state laws in the light of the 73rd Amendment. Most of the state governments have retained the same definition.

The Concept of Gram Sabha As stated in the preamble of the 73rd Amendment, the panchayati raj institutions (PRIs) had not been “able to acquire the status and dignity of viable and responsive people’s bodies” and, hence, it was necessary to “endow them with such powers

and authority as may be necessary to enable them to function as units of self-government.” It is known that the 73rd Amendment heralded the primacy of the people over their representatives, and this was being attempted through the incorporation of the gram sabha at the village level. In the schema of panchayati raj, the panchayats at the lowest level were considered as the governments of the people but following the 73rd Amendment, this status has been conferred on the gram sabha.

In spite of such a clear definition of the gram sabha, there are still considerable being under the panchayat. It is well known in our country that a panchayat often consists of more than one village and several small hamlets (called as *padas*, *wadis*, *tolas*, *Pods*, *tandas*, *dhanis*, and so on). When there is only one village in the panchayat, the present definition of the gram sabha does not pose a problem, but when there are multiple units, the gram sabha of a panchayat cannot simply come into existence. It is not only operationally unviable but also conceptually fallacious.

This deficiency in the panchayat acts has been partially overcome in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006 and the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996. The FRA is a union government legis

lation, whereas the states had to modify their respective panchayat acts in the light of the PESA. The FRA defines that

“Gram 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.²

The most notable element of the FRA is that the community forest rights (CFRs) are bestowed on the gram sabha of that particular village or habitation, and not on the panchayat.

In the PESA, the basic definition of the gram sabha is that of a village assembly comprising all persons whose names have been included in

the electoral rolls for the panchayat at the village level. However, as for the composition, the gram sabha is conceived at the village level. For example, the PESA of Maharashtra (modified in 2014) states that “All the people included in the electoral rolls for the Panchayats at village level shall be

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the members of the gram sabha of that village.”³ In PESA, there is a provision for any habitation/hamlet or group of habitations/hamlets to demand the status of “village” and subsequently organise the gram sabha of that village. Another hallmark of the PESA is that the primacy of people over their representatives is recognised. The Maharashtra PESA clearly states that: (i) the panchayat shall be deemed to be the executive committee of the gram sabha, and (ii) the panchayat shall function under the general superintendence, control, and direction of the gram sabha. As such, there have been considerable deficiencies in the state

level PESA formulations, but an attempt is being made for the devolution of powers, as per the aspiration of the Constitution, at least in the Scheduled Areas. The concept of gram sabha translates this aspiration into practice.

The Concept of Body Corporate In legal parlance, the term “body corporate” is broadly defined as a corporate entity which has got a legal existence. The *Concise Law Dictionary: With Legal Maxims, Latin Terms, and Words & Phrases* defines “Body” as “a number of individuals spoken of collectively, usually associated for a common purpose, joined in a certain cause or united by some common tie or occupation,” whereas “Body Corporate” is called as one “because the persons are made into a body politic and are of [the] capacity to take, grant, etc, by a particular name” (Aiyar 2009: 128–29). Although the meaning of

“corporation” is implicit in this term, it is not considered equivalent to an “incorporated company” as many bodies corporate are not incorporated companies.

Conventionally, the panchayat acts defined the “gram panchayat” as a body corporate. For example, the Maharashtra Village Panchayats Act (MVPA), 1959 under the clause “Incorporation of panchayats” specifies that

Every panchayat shall be a body corporate by the name of “the Village Panchayat of” having perpetual succession and a common seal, with the power to acquire and hold property, both movable and immovable, whether within or without the limits of the village over which it has authority and may in its corporate name sue and be sued.⁴

This is echoed by most of the other state acts which have been reformulated after the 73rd Amendment. This incorporation is for all the three tiers, that is, village, block or taluka, and district.

The incorporation of the panchayats as bodies corporate not only makes them legal entities but also enables them to undertake a variety of functions as detailed in the Eleventh Schedule (Article 243G) annexed to the 73rd Amendment. The panchayat, therefore, does not just remain as a collective of representatives but becomes an institution having a perpetual character. Representatives may come and go but the panchayat remains.

Gram Sabha as a Body Corporate If the 73rd Amendment was an advancement over the previous PRIs and if the gram sabha was considered as the government at the lowest level,

then it would have been natural and imperative to incorporate the gram sabha as a body corporate. However, this has not uniformly happened. At present, only Madhya Pradesh (MP) and Odisha have been categorical in bestowing this status on gram sabhas; other state acts have either preferred to remain silent or have taken ambiguous positions. The Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, while constituting and incorporating the gram sabha in Section 5A, clearly specifies that

there shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made thereunder have power to hold, acquire and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act.⁵

The provision of the MP Panchayat Raj (Sanshodhan) Adhiniyam (No 3 of 2001) inserting Section 5A providing for the constitution of the gram sabha was challenged in the High Court of MP but was constitutionally held valid vide *Jankidas Bairagi and Another v State of MP* (2001).

In Odisha, the term “Gram Sasan” is used synonymously with gram sabha.

The Orissa Grama Panchayats Act, 1964 in Section 4.2 says that

the Grama Sasan shall be a body corporate by the name of the Grama to which it relates, having perpetual succession and common seal, with power, subject to the provisions of this Act and the rules made thereunder, to acquire, hold and dispose of property and to contract and may by the said name sue and be sued.

In the next section, it goes a step further and says,

the office and headquarters of the Grama Sasan shall be situated within the limits of the Grama and, unless otherwise ordered by the state government, in the village bearing the name of the Grama.⁶

This is significant because the local government is encouraged to hold property, thereby signalling its corporate status.

In Himachal Pradesh, the government is mandated to declare the "Sabha" areas having a population of not less than 1,000 and not more than 5,000 and then establish a "Gram Sabha" for that area. The

norms for population could be waived in exceptional circumstances like difficult geographic location or the lack of means of transport. Although the term "body corporate" is not explicitly used, the establishment of the "Gram Sabha" is sufficiently indicative. The most significant provision in the Himachal Pradesh Panchayati Raj Act, 1994 is that of the "Up-Gram Sabha."⁷ The up-gram sabha can be constituted for each ward of the gram sabha and can feed in its recommendations to the latter.

While some of these panchayat acts have provided a suitable framework, where is the practical

evidence to demonstrate that the gram sabhas are bodies corporate? The article aims to answer this question by studying the gram sabhas from Gadchiroli district of Maharashtra.

Example of Mendha-Lekha The whole issue of direct, participatory democracy based on the principle of consensus and heralding the idea of self governance was brought to the centre stage by a small tribal village called Mendha-Lekha in the Dhanora taluka of Gadchiroli district. Even before the 73rd Amendment Act, Mendha-Lekha coined a very innovative slogan encompassing

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both representative as well as direct democracy. The slogan was,

*Delhi-Mumbai me hamari sarkar
Hamare gaon me, hum hi sarkar*
(Our government in Delhi and Mumbai we, the government in our village)

Mendha-Lekha worked steadfastly with this ideal and became renowned in the country for demonstrating the primacy and efficacy of the gram sabha as the real local government. The gram sabha made a variety of rules and regulations in the true tradition of self-governance (swaraj) and developed its polity on the non-violent principle of consensual decision-making. Mendha-Lekha was also the first village in the country to receive CFRs over the 1,809 hectares (ha) surrounding forest under the FRA. The story and the heroic struggle of this village to assert its self governance has been well-documented (Bokil 2013) and has proven to be extremely enlightening for hundreds of villages which followed its path and acquired CFRs all over the country. Many of the state governments also found this to be the most effective strategy for overcoming the deprivation of tribal communities and ushering in a peaceful process of development. Following the footsteps of Mendha-Lekha, Pachgaon village in Chandrapur district also demonstrated the efficacy of "gram

sabha sarkar" (Bokil 2018). Lately, the tribal villages in the Melghat region of Maharashtra have also demonstrated how they were engaged in the quest for self-governance

after acquiring CFRs (Bokil 2021). The significance of Mendha-Lekha lies in the fact that it has very effectively demonstrated how the gram sabha can become a body corporate. After acquiring forest rights, it obtained a permanent account number (PAN) from the Income Tax Department.

Subsequently, it also obtained a tax deduction and collection account number (TAN) when it began to sell its bamboo and received the proceeds from the contractors. As it is known, TAN is granted to all those entities which are responsible for deducting tax at source (also known as TDS) or which are required to collect tax at source (also known as TCS).

Following the regime prior to the goods and services tax (GST), it had registered itself to pay the value added tax (VAT) and deposited significant amounts into the state treasury. Needless to mention, the gram sabha maintains separate bank accounts for separate purposes and has also instituted the "village development fund." Recognising the body corporate nature of the gram sabha, the government declared the gram sabha

as the "nodal agency" to implement its works under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).⁸

Mendha-Lekha implemented this decision so effectively that in November 2021, the government recognised all the CFR holding gram sabhas in the state as nodal agencies under the MGNREGA.⁹ Mendha Lekha also declared itself as a "Gramdani" village under the Gramdan Act¹⁰ in November 2013. It also established the "Maha Sangh" (federation) of around 60 gram sabhas in Dhanora taluka in 2016, effectively heralding the status of gram sabhas as bodies corporate.

Gram Sabhas in Korchi and Kurkheda Talukas

For understanding how the gram sabhas were donning this new responsibility of local self-governance, we undertook a study of gram sabhas in Korchi and Kurkheda talukas in Gadchiroli district. Two voluntary organisations, namely Amhi Amachya Arogyasathi (AAA) and Srishti, which were closely associated with the work at Mendha-Lekha, facilitated the acquisition of CFRs in these talukas, respectively. Following the example of Dhanora taluka, they also mobilised the "maha sangh/maha gram sabha" or federation of the gram sabhas in

More than 90 gram sabhas in Korchi and around 115 gram sabhas from Kurkheda taluka have been endowed with CFRs till 2022 (more than 1,400 gram sabhas all over Gadchiroli). In the article, however, only those gram sabhas which were assisted by these two organisations were covered as part of the study. Eighty-five gram sabhas in Korchi taluka, for which the data was collected, have been granted CFRs over a total area of 25,942 ha (average 305.2 ha each), whereas 27 gram sabhas studied in Kurkheda taluka have been endowed with 10,052 ha (average 418.8 ha). The combined population of 85 gram sabhas in Korchi taluka was 29,419 (average

sabhas in Korchi taluka (100%) and seven in Kurkheda taluka (26%). While no gram sabha in Korchi taluka obtained the TAN, six gram sabhas in Kurkheda had obtained it. The most distinctive indicator was that of the gram sabha's own office. In Korchi, 10 gram sabhas (12%) had established their own offices, whereas, in Kurkheda, seven gram sabhas (26%) had done so. As noted earlier, holding immovable and movable property is a clear characteristic of a body corporate. Conducting statutory audits would be another indicator of a corporation. In Korchi, 19 gram sabhas (22%) had either

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undertaken. Eight gram sabhas from Korchi and three from Kurkehda bene

fi ted from this facility. The gram sabha of Andhali from Kurkheda taluka was also granted a storehouse under the MGNREGA funds. A programme of construction of “Gotul” (traditional Gond dormitory) was implemented by the tribal development department (TDD) of

Maharashtra and seven gram sabhas from Korchi were its recipients.

These gram sabhas have been united into federations (maha sangh). The federation of gram sabhas is one of the most novel political institutions born in the 21st century India. On the one hand, PRIs are people’s institutions, but they are also hierarchical structures, epitomising representative democracy. On the other, the federations of gram sabhas are egalitarian configurations epitomising direct, participatory democracy. In the rest of the country, such structures are unheard of. These talukas in the Vidarbha region have been the pioneering ones. The federations were necessitated to build unity against unscrupulous contractors, and to mobilise synergies in the collection and sale of NTFPs. Both AAA and Srishti put in considerable motivational inputs to build the federations on a solid footing,

been managing their forests and collecting NTFPs, of which tendu and mahua (*Madhuca longifolia*) have been the important ones. Collection

of tendu leaves is a major source of livelihood for the tribal people in India. This is evident from Table 1 in which the information about corporate achievements from all the 87 gram sabhas of Korchi federation is presented.

The total earnings for all the four years come to ₹27,58,55,703, that is, more than ₹27.5 crore. Clearly, this is an indication of their corporate achievement. In Korchi taluka, the federation had created clusters, and the process of issuing tenders and appointing contractors was carried out by the clusters of gram sabhas. Individual gram sabhas were signing contracts on a judicial stamp paper and getting them notarised. This model was followed throughout Vidarbha, and various other non-governmental organisations (NGOs) also mobilised groups of gram sabhas to collect and sell tendu leaves.

The TDD of the Government of Maharashtra took a policy decision in 2018 to financially support the CFR gram sabhas in Gadchiroli and Chandrapur districts to prepare forest conservation and development plans. Each gram sabha was to be provided with a grant of ₹1,77,944 and 75 gram sabhas were thus selected (24 in

Kurkheda, 14 in Korchi, 34 in The district administration of Gadchiroli launched a novel project called “Ekal: Gram Sabha

Empowerment Program” in 2022 for strengthening the gram sabhas with CFRs through capacity building and training activities related to minor forest produce through people’s participation. The newly formed Gondwana University at Gadchiroli was the knowledge partner in this endeavour and it was intended to cover all the 1,438 gram sabhas in the district endowed till date with CFRs. By then, 5,110.07 sq km area of the district was under CFRs out of the total forest area of 9,902.8 sq km (51.6%). In Korchi taluka, 14 of the studied gram sabhas (16.5%) and in Kurkheda 19 of the studied gram sabhas (63.3%) had signed a “memorandum of understanding” (MOU) with the District Transformation Committee (headed by the district collector), whereas, at the time of the study, more than 300 gram sabhas from 12 talukas had signed MOUs with the district administration. This was yet another proof of how the gram sabhas proved themselves as legal entities.

A characteristic of a body corporate is that it can sue and can be sued, that is, it can take punitive action and the same can be taken against it. The latter feature was tragically realised by some of the gram sabhas in the study area. The electrical tower lines of the Raigarh–Pugalur–Trichur high-voltage direct current (HVDC)

transmission project (by the Power Grid Corporation of India Limited–[PGCIL]) and the Raipur–Rajnandgaon–Warora Transmission Limited (RRWTL by Adani Transmission Limited) passed through Korchi and Kurkheda talukas, and the forests of more than 60 villages were impacted by it. Of these, many villages had secured the CFRs and they protested against the loss of livelihoods due to the felling of trees in their CFR area. Their plea was considered legitimate and the district collector of Gadchiroli decreed in 2019 that due compensation should be paid to the gram sabhas.

Subsequently, ₹8,38,88,544 were paid to 19 gram sabhas by both the companies through the collectorate. These were deposited into the respective bank accounts of Korchi and Kurkheda branches of Bank of India. The gram sabhas spent a part of this compensation towards forest-related activities such as tree-plantation, soil and water conservation, village development, and on COVID-19 relief. However, they were met with a rude shock in April 2020 when they were told by the respective banks that their bank accounts were frozen following an order by the district collector. The (successive) district

collector had issued an order on 18 March 2020 (Ref No 158/2020) to the two branch managers that the accounts of the gram sabhas should be completely frozen. No reason was cited except stating that these amounts were not received by the true gram sabhas. At that time, COVID-19 was playing havoc and tendu season was in full swing. This decision, as if from the British raj, put the people and the gram sabhas in great distress. The gram sabhas protested against this decision as no prior intimation was given or no inquiry was conducted. The issue was widely publicised in the media and both the Korchi and

Kurkheda federations appealed to the TDD. It issued a letter to the collector of Gadchiroli on 26 May 2020 instructing them to allow the gram sabhas to operate their accounts. The collector let the gram sabhas operate the account but froze the money received as compensation. Till the time of the article, that is, February 2023, the status quo was maintained, although the collector had been transferred.

Whether the collector with a colonial mentality had the right to freeze the accounts of the gram sabhas is an issue best left to the constitutional and legal experts. However, the whole incident de facto proved that the gram sabhas were legal entities, that is, bodies corporate.

In Conclusion

The discussion clearly demonstrates that the “gram sabhas” are bodies corporate and this is emerging as a new political configuration. This has got far-reaching, positive implications for our republic and democracy. Gram sabhas are not just an assembly of people, it is an institution and a natural, perpetual one. It comes into existence wherever people exist. It not only epitomises direct, participatory democracy but also helps people to establish control over their day-to-day life. At present, this has become possible because of the FRA and the PESA, but this should happen through the panchayat acts as well. Only MP has explicitly recognised this potential, but this example must be followed by other states too. If the gram sabhas are incorporated as bodies corporate, then they could become the engines

for self-governance, livelihood generation, and conservation of biodiversity, among other functions. This is an issue of policy engagement and the activists and NGOs should persuade the respective state governments not only to recognise the body corporate status of gram sabhas but also hand over the surrounding natural resources to the gram sabha. This should not remain restricted only to Scheduled Areas. Following the mandate of the 73rd Amendment, all the gram sabhas in the country should be endowed with productive natural resources, be it land, forest, lakes, grazing pastures or fisheries. This would not only build capital from below but also energise the people's genius, a task left unattended since independence. The panchayati raj became ineffective because it could not remove the maladies of representative democracy. It is high time that the direct, participatory democracy should be ushered in. It would not only ameliorate the deprivation and discontent in rural and tribal areas but also realise the aspiration of the Constitution.

Notes

- 1 The various panchayat acts are available at www.panchayat.gov.in.
- 2 See Chapter 1, Article 2(g) of the FRA, <https://forestrights.nic.in/doc/Act.pdf>.
- 3 See Chapter 2, Article 3 of the PESA, <https://rajbhavan-maharashtra.gov.in/en/notice/pesa-panchayats-extension-to-scheduled-areas-act-1996/>.
- 4 See Chapter II, Article 9 of the MVPA, <https://lj.maharashtra.gov.in/Site/Upload/Acts/H-1742%20THE%20%20MAHARASHTRA%20%20VILLAGE%20%20%20PANCHAYATS%20%20ACT.pdf>.
- 5 See https://www.panchayatgyan.gov.in/documents/448457/0/MP+Panchayat+Act+1993.pdf/98da7215-9650-5fb6-78cc-04b7a307877b?_t=1633270922901.
- 6 See <https://panchayat.odisha.gov.in/sites/de>

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les/2021-05/ORISSA%20GP%20ACT%201964.pdf.

- 7 See [https://himachal.nic.in/WriteReadData/l892s/196_l892s/THE%20HIMACHAL%20PRADESH%20PANCHAYATI%20RAJ%20ACT,%201994\(Final\)-45689723.pdf](https://himachal.nic.in/WriteReadData/l892s/196_l892s/THE%20HIMACHAL%20PRADESH%20PANCHAYATI%20RAJ%20ACT,%201994(Final)-45689723.pdf).
- 8 See general resolution dated 18 April 2012/ Planning Department/MRE/2012/25/No 2012- 0423105749449001.
- 9 See general resolution No 202111301649324316.
- 10 After the Bhoodan–Gramdan movement led by Vinoba Bhave, many state governments have enacted Gramdan Acts whereby the villagers can dissolve their private property in land and hold it in common.

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