

## **Role of Orissa Panchayats in respect of Natural Resource and Biodiversity Management**

In the context of Orissa the Panchayati Raj System consists of Gram Sabha/Palli Sabha (assembly of all adult villagers at village/hamlet level), and three-tier Panchayati Raj comprising Gram Panchayat (elected executive body of Gram Sabha), Panchayat Samiti (elected executive body at intermediate/middle level) and Zilla Parishad or District Panchayat (elected executive body at District level). These Panchayati Raj Institutions are governed by the Panchayati laws exclusively made for them and as well by some Central and State laws made in relation of various their matters. Gram Sabha and each tier of Panchayat have been endowed with a variety of powers and functions in matters connected with governance at their respective levels.

Needless to say, natural resource management and protection of biodiversity is an important arena in respect of which various legislations, sub-ordinate legislations, and policies made by the Centre and State of Orissa are already in place besides the relevant provisions in Panchayati laws of the State. All these legislative instruments have entrusted definite powers and functions to Gram Sabha and different layers of Panchayati Raj. These powers and functions can be studied under the following categories-

- (A) Biodiversity
- (B) Forest
- (C) Land
- (D) Water
- (E) Mining
- (F) Miscellaneous

### **Biodiversity**

The Biological Diversity Act 2002 contains certain provisions which concern the local bodies including Panchayats and the people living in their jurisdiction.

- As per the Section 2(h) of Biological Diversity Act 2002, the term “local bodies” means Panchayats and Municipalities, by whatever name called, as defined in the Constitution and in the absence of any Panchayats or Municipalities, the institutions of self-government constituted under any other provision of the Constitution or any Central Act or State Act.

- As per Section 7, no citizen of India or a body corporate registered in India, shall obtain any biological resource for commercial utilization, except after giving prior intimation to the State Biodiversity Board concerned: But the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and vaidas and hakims, who have been practising indigenous medicine.

- As per Section 21 (1) of Biological Diversity Act 2002, the National Biodiversity Authority shall while granting approvals under Section 19 or Section 20 ensure that the terms and conditions subject to which approval is granted secures equitable sharing of benefits arising out of the use of

accessed biological resources, their by-products, innovations and practices and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefits claimers.

- As per Section 24 (1), any citizen of India or a body corporate, organization or association registered in India intending to undertake any activity referred to in Section 7 shall give prior intimation to the State Biodiversity Board. On receipt of such intimation, the State Biodiversity Board may, in consultation with the local bodies concerned and after making enquiries if necessary by order prohibit or restrict any such activity if it is of opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. However, no such order shall be made without giving an opportunity of being heard to the person affected

- As per Section 32(2) the State Biodiversity Fund shall be applied for such purposes as (a) the management and conservation of heritage sites; (b) compensating or rehabilitating any section of the people economically affected by the notification; (c) conservation and promotion of biological resources; (d) socio-economic development of areas from where such biological resources or related knowledge has been accessed subject to any order made under section 24, in consultation with the local bodies concerned; and (e) meeting the expenses incurred for the purposes authorized by this Act.

- As per Section 37(1) of Biological Diversity Act 2002 the State Government may, from time to time notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act in consultation with the local bodies. The Section 37 (3) mandates that the State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.

- As per Section 41(1) of Biological Diversity Act 2002, every local body shall constitute a Biodiversity Management Committee (BMC) within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and micro organisms and chronicling of knowledge relating to biological diversity. As per Section 41(2), the National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee. As per Section 41(3) the Biodiversity Management Committees may levy charges by way of collection fees from any person for accessing or collecting any biological resources for commercial purposes from areas falling within its territorial jurisdiction.

- Every local body which has constituted a Biodiversity Management Committee shall cause, the annual report and audited copy of accounts relating to such Committee to be submitted to the District Magistrate having jurisdiction over the area of the local body. (Section 47 of Biological Diversity Act 2002)

- A State Government shall by rules notify the manner of management and custody of the Local Biodiversity Fund and the purposes for which such Fund shall be applied; the form of annual report and the time at which such report shall be prepared during each financial year; and the manner of maintaining and auditing the accounts of the Local Biodiversity Fund and the date before which its audited copy of the accounts together with auditor's report thereon shall be furnished (Section 63-2 of Biological Diversity Act 2002).

## **Forests -**

- Panchayat at the appropriate level and Gram sabha shall be endowed with power and authority in respect of the ownership of minor forest produce (Section 4-m-ii PESA 1996);
- 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 [Section 2-g, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- 'Habitat' includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes [Section 2-h, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- 'Minor forest produce' includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tusser, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, tubers and the like [Section 2-i, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- 'Village' means – (i) village as defined in Section 4 of PESA Act 1996, or (ii) any area referred to as village in any State law on Panchayat, or (iii) forest villages, old habitations or settlements and unsurveyed villages whether notified or not; or (iv) in case of States where there are no Panchayats, the traditional village, by whatever name called [Section 2-p, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- No plan for resettlement in critical wildlife habitat shall be carried out without the free informed consent of the Gram Sabha in the areas concerned to the proposed resettlement and to the package [Section 4-2-e, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both within the local limits of its jurisdiction by way of receiving the claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim, and the Gram Sabha shall pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee; any person aggrieved by the said resolution may prefer a petition to the SDLC within 60 days of the passing of the resolution [Section 6, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- No petition shall be preferred directly before the District Level Committee against the resolution of Gram Sabha unless the same has been preferred before and considered by the SDLC [Section 6-4, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- The SDLC, DLC and State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, appointed by respective PRIs, of whom two shall be the ST members and at least one shall be a woman SDLC [Section 6-8, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];

- The provisions of the ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 Act and that of PESA Act 1996 shall enjoy precedence. [Section 13, The ST and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006];
- Gram Panchayat to administer Minor Forest Produce as one of its obligatory functions (Section 44 -1, OGP Act 1964);
- Gram Panchayat to ensure Maintenance and planting of trees on both sides of the public streets and maintenance of village forests as one of its discretionary functions (Section 45, OGP Act 1964);
- Gram Panchayat to ensure maintenance of village forests as one of its discretionary functions (Section 45, OGP Act 1964);
- As per Orissa GP (Minor Forest Produce Administration) Rules 2002 any person intending to procure the minor forest produce from the primary gatherers or to trade in such produce within the Grama Panchayat during any trading year is required to register himself on payment of such registration fee to the concerned Grama Panchayat, as may be notified by the Government from time to time. But fixation of the minimum price would be done by the Panchayat Samiti in September and would be circulated to different offices of district administration and to all the GPs. The Gram Panchayat may modify the prices so fixed keeping in view the local needs by adopting a resolution to that effect. If Panchayat Samiti fails to fix the price then the District Collector would call a meeting of PS preferably in October to fix up the minimum procurement prices. The registered trader shall furnish monthly and annual returns to the GP who in turn shall submit the annual return to the concerned Forest Range Officer. However, in case of violation of the rules by a trader, the Sarpanch or Secretary of the GP shall lodge complaint before the DFO. The DFO may seize the MFP from the defaulter trader, auction it off publicly and deposit the sale proceeds thereof to the State treasury under the appropriate head of account under the Orissa Forest Act.
- The National Forest Policy 1988 in its Chapter on 'Rights and Concessions' (4.3.4) contains the following provisions that have relevance to the people living in villages-
  - The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals.
  - The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.
  - Similar consideration should be given to scheduled castes and other poor living near forests.
- Paragraph-1 Schedule-1 to MG-NREGA 2005 provides for projects on drought proofing, afforestation and tree plantation. to be executed by Gram Panchayat as the principal implementing authority. The micro-planning for such projects is to be done by concerned Gram Sabha (Section 16-1).
- **Govt of Orissa Joint Forest Management Resolution 2008-** on To make the forest-people interface, more effective and transparent, the Government of Orissa in Forest & Environment

Department issued a resolution dated 3.7.1993. This resolution dealt in a fairly exhaustive manner with the involvement of all local communities in protection of adjoining forests, formation of Van Samrakhyana Samiti (V.S.S.), duties and responsibilities of the V.S.S. and their Executive Committees and the role of Forest Department and Gram Panchayats, preparation of Joint Forest Management plan, usufructory benefits for the V.S.S. and provisions of MOU and related issues. Subsequently another Government resolution dated 30.09.1996 tried to confer specific rights in favour of the Village Committees in respect of various products. However, these Resolutions in the past did not cover the National parks and Sanctuaries. Besides the Mangrove Wetlands and the Protected Areas (PA) of the State though need the participatory mode of management, require a different approach. In past all attempts to protect the PA from human interventions by coercion has resulted in hostile attitude of the people towards wildlife and forest staff. Joint Forest Management is an evolving concept encompassing socio-cultural and economic dimensions. With the changing scenario of Forest Management, increasing awareness among people and experiences gained from the past management practices, it is now felt necessary that the State Government resolution on Joint Forest Management needs revision to make it more effective. Such is the rationale behind the latest Joint Forest Management Resolution 2008 announced by Government of Orissa (No.IF-Affn.17/2008- 1 7 4 5 4 /F&E Dated, Bhubaneswar the 22nd October, 2008). This supersedes Forest & Environment Department Resolution 1993. However, all VSSs already formed under provisions of Forest & Environment Department Resolution 1993 will be recognized and treated as formed under this Resolution (Paragraph -16 of Orissa JFM Resolution 2008).

**- Steering Committee under JFM-** There shall be a Steering Committee at the Forest Division Level and another at the State Level. The Forest Division Level Steering Committee shall be chaired by Conservator of Forests and shall comprise 21 official and non-official Members including 2 NGOs, 5 VSSs, Chairmen of two Panchayat Samitis and a Prakruti Mitra Awardee. The Committee shall ensure coordination of all concerned departments/agencies at the district/sub-divisional levels for proper implementation of the JFM programme. (Paragraph 15 of Orissa JFM Resolution 2008)

**- Conflict Resolution under JFM:** In case of intra village conflict in matters of implementation of Joint Forest Management, the Executive Committee of the VSS/ EDC shall endeavour to amicably resolve the conflict. If it fails to resolve the conflict, it shall bring the same to the notice of the Forest Range Officer with its recommendation of action to be taken. In case of inter village conflict, the same would be referred to the Panchayat Samiti for resolving the conflict. In case of a dispute amongst the villages of different Panchayats, the same should be referred to the Divisional Level Steering Committee and their decisions would be final. (Paragraph 13 of Orissa JFM Resolution 2008)

**- Usufruct benefits for the VSS under the JFM-** The members of VSS shall be entitled to the usufructuary benefits from the assigned forests free of cost like fallen leaves, fodder grasses, thatch grass, broom grass, thorny fencing materials, brushwood, fallen lops, and tops and twigs. All intermediate yield in the shape of small wood, poles, firewood etc as may be obtained as a result of silvicultural operations shall be made available to the VSS members in a manner as may be decided by EC (Executive Committee) including the option of at 'a price'. The funds so obtained shall be deposited in the VSS account. In case there is substantial quantity of surplus material, the EC may sell the surplus material under intimation to the DFO concerned. In case of Kendu leaves and specified forest produce, leased items of NTFP, if any, the VSS members will have the right to collect the same from the assigned forest but these items shall have to be delivered to the departmental agencies or lessee on payment of prescribed rates for the collection of such items. However, in case of a major harvest or final felling in the assigned forest, the same shall be taken up by the forest department strictly as per the prescription of the working plan/ duly approved micro

plan. In case of natural calamities, harvesting of wind-fallen trees shall be treated as final harvest. The produce so obtained shall be sold/disposed off by the forest department or by agents of the forest department. The VSS will be entitled to 50% share of the sale price after deduction of proportionate harvesting cost and this will be deposited in their "VSS account". Provided that the VSS may also opt for 50% of the forest produce so harvested if it is for their bonafide domestic use and they agree to pay the proportionate cost of harvesting. In respect of the village woodlots raised under the SIDA Social Forestry Project on land notified as Village Forest and brought under JFM, the VSS shall be entitled to 100% of the usufructs in the final harvest of the plantation while they will be entitled for 50% of the share as usual during subsequent rotations. (Paragraph 11 of Orissa JFM Resolution 2008)

### **Land –**

- The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level (Section 4-i PESA 1996);

- The Gram Sabha and the Panchayats at the appropriate level shall be endowed with 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 (Section 4-m-iii PESA 1996);

- As per 'The Orissa Vesting of Properties (in Grama Sasan) Act, 1964 and the Rules 1965 framed there-under the Grama Panchayat shall be vested with the possession, management and control of orchards, tanks and trees belonging to Government in the Grama Sasan for the better management, control and utilization of such properties.

- As per Section 71(4) of the OGP Act 1964, the following properties, subject to the powers of the State Government, shall ordinarily vest in Grama Sasan and be under its management, direction and control-

(a) Village Roads;

(b) Irrigation sources;

(c) Ferries;

(d) Waste lands and communal lands;

(e) Protected Forests within the meaning of the Indian Forest Act 1927 and unreserved forests within the meaning of the Madras Forest Act, 1882 in respect of management, protection and maintenance thereof for timber, fuel, fodder and other purposes;

(f) Markets and fairs to the extent these are located or held upon public land or on land belonging to or under the control of Government together with such land;

(g) All income arising or accruing from any of the items of above properties.

- As per Section 74 of OGP Act 1964, if a Grama Sasan requires any land for purposes covered under this Act, it should first negotiate with the concerned person having interest in the said land. If the parties fail to reach an agreement, the Grama Sasan shall apply to the Collector in prescribed manner to acquire the land. And the Collector if so satisfied may take steps to acquire the land in favour of the Grama Sasan in accordance with the existing laws. As per Section 75, the GP may

with the previous approval of the Collector place under the control or management of Panchayat Samiti or Parishad any property belonging to the GP.

- Gram Panchayat to look after Construction, repair, maintenance, alteration and improvement of the public roads and their lighting, watering and cleaning as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Removal of Unauthorised obstructions, projections and encroachments as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to look after Construction, maintenance and cleansing of drains and drainage works and all public latrines and urinals etc as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Reclamation of unhealthy spaces, removal of noxious vegetation and abatement of all nuisances as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to look after Establishment and management of common grazing grounds and common lands as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Scavenging, removal and disposal of filth, rubbish and other obnoxious polluting objects as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Supervision and maintenance of soil conservation works as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to look after Protection, maintenance and development of all properties vested in the management of the Grama Panchayat as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Maintenance of community assets as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to ensure Supervision and maintenance of village and field boundary marks and maintenance of village records as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- Gram Panchayat to promote Grama Swechha Sevaks for assisting its social services such as fighting natural calamities like fire or flood as one of its discretionary functions (Section 45, OGP Act 1964);

- Gram Panchayat to assist and advise the farmers in reclaiming waste lands and cultivating fallow lands as one of its discretionary functions (Section 45, OGP Act 1964);

- Gram Panchayat to look after Management and development of co-operative societies for management of land and other village resources including diary farms as one of its discretionary functions (Section 45, OGP Act 1964);

- Gram Panchayat to look after the Maintenance and construction of agricultural bunds situated on Government lands as one of its discretionary functions (Section 45, OGP Act 1964);

- In the Scheduled Areas, no acquisition of land for development projects and for resettling or rehabilitating persons affected by such projects shall be made without prior consultation with the Parishad (Section 3-6, Orissa Zilla Parishad Act 1991).

**- Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation 1956, amended 2002:** As a part of the duty cast on the Governor under Clause-2(a) of Fifth Schedule of the Constitution to 'prohibit or restrict the transfer of land by or among the members of the Scheduled Tribes' the Governor Orissa had promulgated the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation 1956. In an effort to comply with PESA's directive, the said Regulation was amended in 2000 and that amendment came into force w.e.f. 4<sup>th</sup> September 2002. As a result of the amendment, certain new provisions were made in the Regulation. Firstly, any transfer of immovable property by a member of Scheduled Tribe shall be absolutely null and void, except under certain circumstances. Secondly, a member of ST shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres of irrigated land and less than five acres of un-irrigated land vide Clause 3(1-iii). Thirdly, the competent authority (Collector) may, on receiving the information received from a Grama Panchayat about a case of illegal transfer, order ejection against the illegal possessor of the property and restoration of such property to the transferor or his heirs vide Clause 3(2). Fourthly, on finalisation of the proceedings of a case, the competent authority shall make a report to the concerned GP about such orders of ejection or restoration vide Clause 3A(3). Fifthly, if any person is found to be still continuing to illegally occupy the concerned immovable property belonging to a Scheduled Tribe, he shall be punishable with rigorous imprisonment or fine or both depending upon the nature of contravention vide Clause 7.

**- National Rehabilitation and Resettlement Policy 2007-** 6.2 Every declaration made under paragraph 6.1 of the policy (for acquisition of land involving involuntary displacement) shall be published in at least three daily newspapers, two of which shall be in the local vernacular, having circulation in villages or areas which are likely to be affected, and also by affixing a copy of the notification on the notice board of the concerned gram panchayats or municipalities and other prominent place or places in the affected area and the resettlement 'area, and/or by any other method as may be prescribed in this regard by the appropriate Government. (6.2). The draft rehabilitation and resettlement scheme or plan shall also be discussed in gram sabhas in rural areas and in public hearings in urban and rural areas where gram sabhas don't exist. ( 6.15.1). The consultation with the gram sabha or the panchayats at the appropriate level in the Scheduled Areas under Schedule V of the Constitution shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (6.15.2). The concerned gram sabha or the panchayats at the appropriate level in the Scheduled Areas shall be consulted in all Cases of land acquisition in such areas before issue of a notification under the Land Acquisition Act, 1894 or any other Act of the Union or a State for the time being in force and the consultation shall be in accordance with the provisions of the PESA Act 1996 and other relevant laws. (7.21.2). The Rehabilitation and Resettlement Committee shall comprise as its members a representative of women residing in the affected area, a representative each of the Scheduled Castes and Scheduled Tribes residing in the affected area; a representative of a voluntary organization; and Chairperson(s) of the panchayats and municipalities located in the affected area among others. (8.1.2).

**-- Orissa Resettlement and Rehabilitation Policy 2006-** Gram Sabha or Panchayats at the appropriate level shall be consulted in scheduled areas before initiating Land Acquisition Proposal. (Section 5-g Orissa Resettlement and Rehabilitation Policy 2006); The list of displaced families so approved will be displayed at Collectorate / Block/ Tehsil / Panchayat and other conspicuous locations for wider dissemination. (Section 5-c Orissa Resettlement and Rehabilitation Policy 2006); Normal development programmes implemented by different agencies should be dovetailed

with resettlement and rehabilitation package in resettlement habitats and made available to the displaced community on a priority basis. (Section 5-h Orissa Resettlement and Rehabilitation Policy 2006); An identity card shall be issued to each displaced family in a manner prescribed by Government. (Section 5-i)

- Paragraph-1 of Schedule-1 to MG-NREGA 2005 provides for projects on land development, rural connectivity to provide all-weather access. The construction of roads may include culverts where necessary, and within the village area culverts may be taken up along with drains. Such projects are to be executed by Gram Panchayat as the principal implementing authority. The micro-planning for such projects is to be done by concerned Gram Sabha (Section 16-1).

## **Water**

- Planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level (Section 4-j PESA 1996);

- Gram Panchayat to look after Construction and maintenance of works and means of supply and storage of drinking water as one of its obligatory functions (Section 44 -1, OGP Act 1964);

- In the Scheduled Areas the Parishad shall plan and manage the minor water bodies. (Section 3-6, Orissa Zilla Parishad Act 1991)

- Gram Panchayat to look after Establishment and Maintenance of ferries, as one of its obligatory functions (Section 45, OGP Act 1964);

- “Pani Panchayat” at the primary level consists of all the water users, as constituted within a specified hydraulic boundary of a major, medium, minor (flow and lift-both surface and ground water) and creek irrigation projects funded by government (Section 2-i of Orissa Pani Panchayat Act 2002);

- There shall be a Pani Panchayat called by its local distinct name for every area; Every Pani Panchayat shall consist of all the water users who are land holders in the area of a Pani Panchayat; Government may, by notification nominate at least one officer each from Department of Water Resources, Department of Agriculture, Department of Revenue to be members of the Pani Panchayat without having the right to vote; Members so specified shall constitute the General Body of a Pani Panchayat and shall have the right to vote. (Section 3, Orissa Pani Panchayat Act 2002);

- No officer or servant of the Government of India or any State Government or of local authority shall be qualified for being elected as or for being a President or a member of the Executive Committee of a Farmers’ Organisation (Section 14, Orissa Pani Panchayat Act 2002);

- **National Water Policy 2002-** The Policy in its Chapter on Participatory Approach to Water Resources Management says, “Management of the water resources for diverse uses should incorporate a participatory approach; by involving not only the various governmental agencies but also the users and other stakeholders, in an effective and decisive manner, in various aspects of planning, design, development and management of the water resources schemes. Necessary legal and institutional changes should be made at various levels for the purpose, duly ensuring appropriate role for women. Water Users’ Associations and the local bodies such as municipalities and gram panchayats should particularly be involved in the operation, maintenance and management of water infrastructures / facilities at appropriate levels progressively, with a view to eventually transfer the management of such facilities to the user groups / local bodies. (Paragraph-12).

**- Swajaldhara Guidelines launched in 2003-** In order to converge all the reform initiatives in rural drinking water sector, a comprehensive guidelines for the Swajaldhara initiated in 2002 was formulated. Involvement of the three tier Panchayats, requisite social mobilisation, communication, capacity development processes were considered to be important components of the Swajaldhara. It was considered necessary to institutionalise community based rural drinking water supply programme with the Panchayati Raj Institutions and local communities to generate resources and equip them to plan, implement, use, maintain and replace water supply schemes themselves. Swajaldhara will have two Dhara (streams). First Dhara (Swajaldhara I) will be for a Gram Panchayat (GP) or a group of GPs or an intermediate Panchayat (at Block / Tehsil level) and the Second Dhara (Swajaldhara II) will have a District as the Project area. The following are some of the salient features of Swajaldhara-

- Full ownership of drinking water assets with appropriate levels of Panchayats,
- partial capital cost sharing either in cash or kind including labour or both, 100% responsibility of operation and maintenance (O&M) by the users ;
- For the proper and effective implementation of Swajaldhara Projects (i) Panchayati Raj Institutions (PRIs) are to be vested with functions and finances, and supported with functionaries to carry out the responsibilities of drinking water supply scheme planning, designing, implementation, operation, maintenance and management. (ii) Village Water and Sanitation Committee will have to be a committee of Gram Panchayat. (iii) States would need to enact and implement law on effective ground water extraction control, regulation and recharge. (iv) Institutional strengthening and capacity development of the State, District, Block, Gram Panchayats and the community level institutions is necessary.
- State Government should have an effective State Water and Sanitation Mission with a competent support organisation for implementation of Swajaldhara. State Government should integrate water conservation and rain water harvesting schemes with the drinking water supply schemes. Rural drinking water, sanitation, health, and hygiene programmes need to be integrated at the State, District, Block and GP levels.

**- Paragraph-1 Schedule-1 to MG-NREGA 2005** provides for projects on water conservation and water harvesting; irrigation canals including micro and minor irrigation works; provision of irrigation facility to land owned by households belonging to the Scheduled Castes and Scheduled Tribes or to land beneficiaries of land reforms or that of the beneficiaries under the Indira Awas Yojana of the Government of India. renovation of traditional water bodies including desilting of tanks, and flood control and protection works including drainage in water logged areas, to be executed by Gram Panchayat as the principal implementing authority. The micro-planning for such projects is to be done by concerned Gram Sabha (Section 16-1).

**- Jaldhara of Orissa Water and Sanitation Mission-** Water Sanitation and hygiene can deliver across the MDGs. Improved and safe water supply not only reduces the burden of domestic tasks on women, but also reduces incidence of water-borne diseases in the household. The physical target for 11th Five Year Plan (2007-12) envisages coverage of over 141368 habitation on sustainable basis with PWS or Piped Water Supply (1114) and spot source (245026 Tube wells and 7522 sanitary wells). (PERSPECTIVE PLAN FOR WATER TO ALL, JALDHARA Para, Para- 5.3.1 New Approach).

As regards the Role of Gram Panchayat, the Perspective Plan for Water for All says,

“6.1.1 Each functionary of Gram Panchayats including Ward Members PS Member and Sarpanch must agree and attempt to construct toilets in their own households. Accordingly all Water Health & Sanitation Committee be reconstituted with members having toilets in their households. They may lead by example as is envisaged in SANJOG Campaign launched by Hon’ble Chief Minister in June 2007.

6.1.2 Each Gram Panchayat may pass resolution to agree to operate and maintain PWS schemes.

6.1.3 Self Employed Mechanic (SEM) to be engaged as pump operator.

6.1.4 Panchayats must have taken to stock and maintained spot sources and PWS if any.

6.1.5 Panchayats may consider levying user charges for sustainable water supply systems and provide house connection on payment of cost of installation and service charges as may be resolved by Panchayat.

6.1.6 Panchayats must take lead role in providing toilets in Gram Panchayat office, Primary School, and Anganwadi Centre.

6.1.7 Panchayats must take lead role in TSC campaign to provide individual household latrines to all BPL households and persuade APL households have toilets.

6.1.8 Planning for each habitation with sustainable water supply scheme must be initiated. Traditional water bodies like ponds minor and medium irrigation projects and lift irrigation points can be used to provide water.

6.1.9 Source identification and electrification must be the first charge on TFC fund.

6.1.10 Institutionalisation of community participation is going to be key to success of such initiatives.

6.1.11 Where as attempt shall be made to provide PWS in bigger villages but problem areas must be given priority.

6.1.12 No PWS shall be deemed to have been completed unless it provides necessary access to vulnerable sections like SC ST and minorities.

6.1.13 A copy of Perspective Plan of Drinking Water shall be web-hosted on Gram Panchayat, Panchayat Samiti and Zilla Parishad Portal for wider dissemination.

6.2 Role of Panchayat Samiti. Panchayat Samiti may look into the plan of action prepared by GP and attempt to prioritise based on ground realities and coverage of habitation. The Purchase Committee under the chairmanship of BDO may look into the implementation of PWS in addition to spare parts procurement.

6.3 Role of Zilla Parishad: ZP may discuss and prioritise drinking water plan of action and attempt District Master Plan of Sustainable Drinking Water. The JE Mechanical attached to DRDA may coordinate the O & M of rural water supply schemes and Sanitation schemes in addition to hi/her own duty.

6.4 Role of SIRD: SIRD may include IEC material on water and Sanitation as part of training and capacity building in its classroom, off-campus and Gramsat-based interactive training plan.

6.5 Role of RWSS: Each JE attached to Panchayat Samiti must assist Gram Panchayat to prepare Village/GP Micro Plan. He must prepare detailed estimate including Detailed Project Report (DPR),

bills of Materials (BoM) and bills of Quantity (BoQ) with standard schedule of rate and EPM rate of material.

6.5.1 EE SE CE RWSS must provide Administrative approval and Technical sanction to the Perspective Plan for prioritise funding.

6.5.2 CE may circulate a Model Plan of Detailed Project Report (DPR), bills of Materials (BoM) and bills of Quantity (BoQ) along with rates of EPM items. Design of Over ead Tank (OHT) and OHT-cum pump house-Inspection room may be part of estimate.

6.5.3 A copy of model estimate/DPR is enclosed at Annexure-4

6.5.4 The PWS must have provisions for at least a 500-1000 ltrs Sintax-type tank for storage and installation in the Toilets of School and AW Centres.

6.5.5 ARWSP and Sub-Mission Fund may be used to provide material component.

6.5.6 Turnkey contract management system shall be evolved to implement the scheme in 11 months project cycle.

6.5.7 Citizen Information Board on the pattern of PMGSY be installed at the site to facilitate transparency and social audit.

6.5.8 RWSS may adopt State Quality Monitor (SQMs) system for quality certification of water, yield, implementation process and procedures and look into the estimate of work.

6.6 Joint guidelines for engagement of SQMs large scale identification of sources and DPR cost to be met out of TFC and survey and investigation fund of RWSS.

6.7 NGOs like Gram Vikas and other committed to TSC and water to all ideology may be associated in planning and implementation of large scale PWS in Orissa. They may also be associated for Capacity Building,PWS & TSC ,Role of RWSS Training centre, Convergence with PRI,Convergence with SHG, Role of UNICEF WaterAid etc/

6.8 To achieve 35% coverage of population with PWS in next 2-3 years a multi-pronged strategy needs to be followed. The Periphery Development Fund of Industries and rural water supply schemes may even be treated as part of PDF contribution”.

## **Mining**

- The recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas (Section 4-k PESA 1996);

- The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction (Section 4-1 PESA 1996);

- In the Scheduled Areas, no prospecting license or mining lease for minor minerals or concession for the exploitation of minerals by auction shall be granted under any law except with the prior recommendation of the Parishad (Section 3-6, Orissa Zilla Parishad Act 1991).

## **Miscellaneous**

- Eleventh Schedule of the Constitution has enlisted 29 subjects, to be administered by Panchayats at different levels. Among the said subjects, those which are related to natural resource management are agriculture, land improvement and soil conservation, minor irrigation and water management, animal husbandry, fisheries, social and farm forestry, minor forest produce, drinking water, fuel and fodder, roads, bridges and water ways etc., non-conventional energy sources and maintenance community assets.
- A State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources (Section 4-a of PESA 1996);
- Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution (Section 4-d of PESA 1996);
- The Panchayat at the appropriate level and Gram Sabha shall be endowed with the power to control over local plans and resources for such plans including tribal sub-plans (Section 4-m-vii of PESA 1996);
- Every Gram Sabha shall (i) approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level; and (ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes (Section 4-e of PESA 1996) ;
- Every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects (Section 4-f of PESA 1996);
- It shall be the duty of Grama Panchayat within limits of its funds to implement schemes for economic and social justice and undertake execution of any other scheme including those in relation to the matters listed in the Eleventh Schedule of the Constitution subject to such terms and conditions as may be specified in the order (Section 44-3b, OGP Act 1964);
- Gram Panchayat to ensure maintenance of the records on cattle census along with human census, registration of animals sold, regulation, and control of the movement of cattle for protection of crops and destruction of stray dogs as its obligatory functions (Section 44 -1, OGP Act 1964);
- Gram Panchayat to maintain Cattle Pounds as one of its discretionary functions (Section 45, OGP Act 1964);
- Zilla Parishad shall undertake schemes or adopt measures including giving of financial assistance relating to the development of agriculture, social forestry, live stock, water-supply, minor irrigation, etc. (Section 3- Orissa Zilla Parishad Act 1994)
- Panchayat Samiti shall undertake Planning, execution and supervision of development programmes, schemes and works in the block relating to Community Development including those pertaining to 'Tribal Development Blocks' (Section 20-1-a of Orissa Panchayat Samiti Act 1959).

- In Scheduled Areas Panchayat Samiti shall prepare the local plans including tribal sub-plans for the area and exercise control over the resources for such plans (Section 20-5-ii of Orissa Panchayat Samiti Act 1959).

- In Scheduled Areas Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity community resources and the customary mode of dispute resolution consistent with relevant laws in force and in harmony with basic tenets of the Constitution and human rights. (Section 5-6, OGP Act 1964);

- In Scheduled Areas, subject to the control and supervision of the Grama Sasan, the Grama Panchayat shall exercise within its local limits, such power and perform such functions in such manner and to such extent as may be prescribed in respect of the following matters, namely (a) enforcement of prohibition or regulation or restriction of the sale and consumption of any intoxicant; (b) the ownership of minor forest produce; (c) prevention of alienation of land and restoration of any unlawfully alienated land of a Scheduled Tribe; etc. (Section 44-2 of OGP Act 1964).

**- Amendment to Bihar and Orissa Excise Act 1915 in respect of Scheduled Areas:** Bihar and Orissa Excise Act 1915 was amended in 1999 (Act 2 of 1999) by inserting Section 26-A, whereby it was provided that in a Scheduled Area no license or exclusive privilege for manufacture or sale of intoxicant shall be granted “except with the prior approval of concerned Grama Panchayat accorded with the concurrence of Grama Sasan”. Further it says, if the Grama Panchayat fails to communicate its decision to the competent authority within a period of 30 days from the date of receipt of the proposal for licensing a unit for manufacture or sale of intoxicants, “it shall be deemed that the concerned Grama Panchayat has accorded the required approval”.

**Disaster Management Act 2005-** As per the Section 2(h) the term ‘Local Authorities’ includes panchayati raj institutions, municipalities, a district board, cantonment board, town planning authority or Zila Parishad or any other body or authority, by whatever name called, for the time being invested by law, for rendering essential services or, with the control and management of civic services, within a specified local area. The Chapter VI of the Act deals with LOCAL AUTHORITIES. The Functions of Local Authorities as mentioned in Section 41(1) are as follows: Subject to the directions of the District Authority, a local authority shall- (a) ensure that its officers and employees are trained for disaster management; (b) ensure that resources relating to disaster management are so maintained as to be readily available for use in the event of any threatening disaster situation or disaster; (c) ensure all construction projects under it or within its jurisdiction conform to the standards and specifications laid down for prevention of disasters and mitigation by the National Authority, State Authority and the District Authority; (d) carry out relief, rehabilitation and reconstruction activities in the affected area in accordance with the State Plan and the District Plan. As per Section 41(2) the local authority may take such other measures as may be necessary for the disaster management.

**- Orissa Disaster Management Policy 2005-** GOVERNMENT OF ORISSA in REVENUE DEPARTMENT took a RESOLUTION Dated the 4<sup>th</sup> March, 2005. on State Disaster Management Policy with a focus on total risk management and vulnerability reduction by strengthening the physical infrastructure as well as bio-physical, psychological, social and economic status of the people and to make the people increasingly disaster resilient as well. An important principle that informed this policy was to decentralise management of disasters to the Block, Gram Panchayat / Municipality levels and strengthen their institutional and functional capacities to be effective as the first responders to disaster events. The policy emphasizes coordinated efforts of the stakeholders

including the community affected/ vulnerable to disasters, Volunteer based organisations such as NSS, NCC, Indian Red Cross, Civil Defence, Scouts and Guides, Nehru Yuva Kendra, etc, Civil Society Organizations including Community-based Organizations and Panchayati Raj Institutions and Urban Local Bodies. Specifically, as regards the Role of local self-government, the Policy says,:"Being closest to the people, the role of the local self-government institutions assumes greater importance in disaster management. They will be the first responders in emergencies. Emphasis will be given to strengthen and empower these institutions and their functionaries, to effectively discharge their functions. (Para 3.2.8). The Policy aims at building up a detailed inventory of resources, both human and material, available with all stakeholders required for emergency management functions at the State, District, Block and GP/ Municipality levels.

**KBK Development Plan** – The RLTA (Revised Long Term Action Plan) covering 8 districts, Koraput, Nabarangpur, Raygada, Malkangiri, Sonepur, Bolangir, Kalahandi and Nuapada has been working since 1995-96, the salient features of which are (i) drought proofing, (ii) poverty alleviation, and (iii) improved quality of life for the local people. In order to achieve these objectives, certain strategies have been adopted. One such strategy is the Chief Administrator, KBK, Deputy Chief Administrators, all senior officers have been requested to hold public hearings in the KBK districts, hear grievances of local people and help redress their grievances including irregularities, if any, committed in programme implementation. With a view to increasing direct interaction with local people at Gram Panchayat and Block levels, Gramsat pilot project has been launched in the KBK districts. This initiative has also helped video-conferencing with rural people of the region. The Special Rapporteur, NHRC and representatives of the Planning Commission and Prime Minister's Office shall be periodically involved in appraising the performance of the RLTA.

- **Bharat Nirman**- A time-bound plan for rural infrastructure by the Government of India in partnership with State Governments and Panchayat Raj Institutions 2005-2009- Bharat Nirman is a time-bound business plan for action in rural infrastructure for the next four years. Under Bharat Nirman, action is proposed in the areas of irrigation, road, rural housing, rural water supply, rural electrification and rural telecommunication connectivity. Specific targets were envisaged to be achieved under each of these goals so that there is accountability in the progress of this initiative.

- **WORLP (Western Orissa Rural Livelihoods Project)**- It works in four districts of the State of Orissa. The project was inaugurated in August 2000 but the full-scale field implementation activities began in October 2001. The four project districts; Bargarh, Balangir, Kalahandi and Nuapara are among the poorest in India. Health indicators are poor, there is a shortage of safe drinking water and drought recurs regularly. Inequitable social structures, distorted land distribution, indebtedness, and gender and other inequities contribute to the widespread poverty in western Orissa and impede access by poor and marginalised people to resources. Supporting new patterns of rural development, WORLP contributes to reducing poverty by promoting livelihoods initiatives for the poorest. The livelihoods approach adopted by WORLP focuses on building, and working with, people's existing strengths and resources. The approach is about informing, enabling, initiating and empowering appropriate choices for long-term well being. It involves all sections of rural society across caste, class, gender and other divides. WORLP, a Government of Orissa initiative, is managed by the Orissa Watershed Development Mission. It is a joint venture of the Government of Orissa and DFID.

- **Orissa Relief Code 1980**- The official committees, formed under this Code to mitigate disasters may or may not consult the Panchayatiraj representatives while taking decisions (Para-19 of Code).

**- Integrated Coastal Zone Management Project (Communication Strategy)-** It is envisaged that in 3 States (West Bengal, Orissa and Gujarat) external communications at the state level can be improved along with internal communication for all sections of the community to be involved in the project. Ownership of the project by all stake holders including industries, fishermen, representatives of tourism and NGOs is important for its success. This can be done by the project directors, communications and capacity building managers to the SPMUs in all three states through mass media campaigns and consultations with stakeholders. NGOs, gram panchayat leaders, CBOs, SHGs, FPCs and representatives of fisheries, tourism, and industry should be brought on board and kept informed about the importance of saving lives and livelihoods while protecting the coasts.

**- Integrated Coastal Zone Management (Capacity Building)-** Capacity building of all those involved in implementing the ICZMP is vital as the project is large as well as diverse. Training workshops on ICZM principles, communications, documentation and use of the Right To Information Act should be conducted by the principal secretaries for environment and forests in all three states. The participants should be CBOs, panchayati raj institutions, Self Help Groups and Forest Protection Committees. Their knowledge of ICZMP would be enhanced through national and international examples of good practices on ICZM principles and an update on laws enacted for the management and protection of coast and coastal communities.

**- Integrated Coastal Zone Management Project (Vital Role of Gram Sabhas)-** At the grassroots level, the nodal officers of PIAs must increase the understanding of the gram sabha about the ICZMP. If the gram sabha understands the importance of the ICZM project it will be able to get the support of the entire village. So through meetings of the gram sabha, audio visual presentations, posters and pamphlets, wall notice boards, souvenirs such as T-shirts, bags, caps etc the message 'save lives and livelihood, save the coasts' has to be communicated. In addition to the gram sabhas, fishermen, CBOs and others who have a stake in coastal conservation should be told about activities like hazard mapping, delineation of ESAs, securing livelihoods through priority investments chosen for the three states that create opportunities for economic improvement.

**- Integrated Coastal Zone Management Project (Grievance Box at Suitable Locations) -**While at the national and state level there should be provision for putting complaints on a project website, at the PIAs level there should be a grievance box at the panchayat office. All grievances should be addressed by a senior officer within a fortnight of receiving a complaint. For those unable to access the web site or use internet, there should be Grievance Box conveniently located at places which the common man can reach and put in his complaint or ask for information. Grievances received have to be addressed by a designated senior officer of the SPMU within fortnight of receiving the complaint.

**- Integrated Coastal Zone Management Project (Using Panchayat Computers for transparency)-** Since information is key to knowledge and empowerment of communities, the panchayat computers should have project details uploaded in the local languages. The computers can be linked with SPMU and NPMU through a tie up with existing e-chaupals in the states through broadband connections (wherever available) so that there is a chain of transparency and accountability right up to the state and national level.

**- Environment Impact Assessment Notification 2006-** The MINISTRY OF ENVIRONMENT AND FORESTS, Govt of India announced a Notification dated 14<sup>th</sup> September, 2006 on the new guidelines for Environment Impact Assessment and Public Hearing in superseding of earlier notifications in this regard. "Public Consultation" refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the

project or activity design as appropriate. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means. After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP.

As regards the PROCEDURE FOR CONDUCT OF PUBLIC HEARING, the above Notification maintained that the Public Hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or in its close proximity by the concerned State Pollution Control Board (SPCB).

The Applicant shall make available the hard copies and also soft (electronic) copies of the draft EIA Report including the Summary Environment Impact Assessment report in English and in the local language, prepared strictly in accordance with the given Terms of Reference. Simultaneously the applicant shall arrange to forward copies, one hard and one soft, of the above draft EIA Report along with the Summary EIA report to certain authorities or offices, within whose jurisdiction the project will be located, that include Zilla Parishad or Municipal Corporation among others. On receiving the draft Environmental Impact Assessment report, the above-mentioned authorities shall arrange to widely publicize it within their respective jurisdictions requesting the interested persons to send their comments to the concerned regulatory authorities. They shall also make available the draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the Public Hearing is over.

The SPCB shall also make similar arrangements for giving publicity about the project within the State and make available the Summary of the draft Environmental Impact Assessment report (Appendix III A) for inspection in select offices or public libraries or panchayats etc. The Member-Secretary of the concerned SPCB shall finalize the date, time and exact venue for the conduct of public hearing and advertise the same in one major National Daily and one Regional vernacular Daily. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses;

The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing.

The SPCB shall arrange to video film the entire proceedings. The attendance of all those who are present at the venue shall be noted and annexed with the final proceedings. Every person present at the venue shall be granted the opportunity to seek information or clarifications on the project from the Applicant. The summary of the public hearing proceedings accurately reflecting all the views and concerns expressed shall be recorded by the representative of the SPCB and read over to the audience at the end of the proceedings explaining the contents in the vernacular language. A Statement of the issues raised by the public and the comments of the Applicant shall also be prepared in the local language and in English and annexed to the proceedings. The proceedings of the public hearing shall be conspicuously displayed at the office of the Panchyats within whose jurisdiction the project is located, office of the concerned Zila Parishad, District Magistrate, and the SPCB. The SPCB shall also display the proceedings on its website for general information. Comments, if any, on the proceedings which may be sent directly to the concerned regulatory authorities and the Applicant concerned.

**Chitta Behera, 4A Jubilee Tower, Choudhury Bazar, Cuttack-9, Mobile: 9437577546 in April 2011**