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Subject: [Com-Con] Statement by Chitta Behera before 3rd Orissa Finance Commission
To:
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Statement by Chitta Behera before ‘ Third Orissa State Finance Commission’ at a Civil Society Consultation held at Hotel Bari International, Bhubneswar on 3rd Sept. 2009

The above consultation organized jointly by PRIA, CWS and CYSD and presided over by **Sri A.V.Swami** started off around 11 AM with a note of welcome by **Ms.Rekha Panigrahi** of CWS. The **Chairman of ‘Third State Finance Commission Prof. Sudhakar Panda** was present along with **Sri Swapneswar Baya and Sri Bijay Kumar Mohanty the members of the Commission**. About 50 persons hailing from different backgrounds and regions of Orissa were present on the occasion. On the request of the participants Chairman Prof. Panda delivered a brief talk on the activities so far done at Commission’s level. According to him, the Commission has submitted an interim report to the Government, but couldn’t be shared with the public since it was yet to be laid in the Assembly. However, he was willing to share his overall observation and experience, in an informal way, on the work of the Commission with the civil society members present. Prof. Panda recounted that as a part of their ToR, they visited several PRIs in different parts of the state to get a direct feel of the perceptions of PRI representatives and as well see for themselves the kind of PRI activities going on at ground level. The overall refrain of Prof.Panda’s talk was that the actual state of affairs at PRI level everywhere was a too dismal one and its representatives lacked in sincerity in giving effect to the expectations pinned on them by both Government and common people.

The objective of the consultation was formally presented by **convener Sri Ranjan Kumar Rout representing PRIA**, who in course of his brief narration observed that the recommendations of the previous two State Finance Commissions, especially that of the latest one i.e. Second Commission, though salutary from the perspective of empowerment of PRIs in the State, have not been given effect to by the State Government and there existed therefore an urgent imperative to press the Government not to give a short shrift, but to act on the recommendations of Finance Commission as and when these are submitted. Sri Rout was followed by **Sri Pradip Pradhan, a long-time, eminent activist on Panchayatiraj**, who took a panoramic view on the Finance Commissions and dealt inter alia with the Constitutional mandate behind the Commissions, works of the 11th and 12th Finance Commissions at national level and that of the 1st and 2nd State Finance Commissions in Orissa. The dominant ethos of Sri Pradhan’s presentation was however similar to that of Sri Rout i.e. the recommendations of the Commissions, though good and wholesome for the PRIs in general and the Grama Panchayats in particular, were hardly heeded by the State Government of Orissa. It therefore behooves the civil society groups of the State to up their vigil right from now to ensure that the recommendations of the ongoing, 3rd State Finance Commission, as and when these are out, won’t fall into deaf ears of the State Government as in the

past.

Then the President declared the floor of the house open to the participants, who might wish to make out their respective positions or views, if any, before the members of the Commission. The first respondent was **Sri Chitta Behera from Cuttack**, who made a verbal presentation of his views assuring that the same would be submitted some days later in black and white.

Taking the cue from the observations made by both Sri Rout and Sri Pradhan, Sri Behera took a dig at them saying, it was not true that the recommendations of the State Finance Commissions were good in themselves. Though it is true that the State Government has been loath in implementing the recommendations whatsoever given by successive Commissions, to hold that their recommendations were good and beneficial for empowerment of PRIs is far from truth. What is wanted first and foremost today by the civil society groups is a thoroughgoing critique of the recommendations of State Finance Commissions, especially that of the latest (Second) one, coupled with a strong plea before the Third State Finance Commission to articulate clearly the naked truth in their Report, which remains so far untold, let alone addressed, and stylize their recommendations accordingly. Then Sri Behera went on illustrating some inherent anomalies that afflict the OGP Act 1964 through and through, on account of which the Grama Panchayats of Orissa remain today thoroughly dis-empowered as ever before. To exemplify the predicament of PRIs in Orissa, he cited the instance of a motor vehicle, which remains stalled but continues to shrill because its driver presses both its brake and accelerator at a time. While Government's lip-service to 73rd Amendment, 1992 can be likened to the pressing of accelerator, the adherence to inherently flawed OGP Act 1964 to that of the brake. The quintessence of Sri Behera's contention was an appeal to the 3rd State Finance Commission, who should hopefully lay bare the unbridgeable gap that existed between the two, recommend a radical overhaul of the archaic OGP Act 1964, which is more than 25 years older than the 73rd Amendment and thereby pave the ground for the Grama Panchayats of Orissa to emerge as 'institutions of self-government' as envisaged in 73rd Amendment.

1. On Taxing Powers of a Grama Panchayat -

The Second State Finance Commission seems to have been, and of course rightly so, greatly perturbed by the extremely precarious state of internal revenues (tax and non-tax) the Orissa's PRIs, especially the Grama Panchayats, have been passing through over decades. And the Commission in their anxiety to help them overcome it suggested a volley of measures in *Chapter-6 (Current Financial Position of Local Bodies and Further Resource Mobilisation)* of their Report for consideration by the State Government. The most important of the measures so recommended is the imposition/re-introduction of as many as 17 taxes at GP level, a quick appraisal of which can be accessed from *Recommendation No.XIII of the Report's Summary (Chapter-11)*. In the words of the Commission, "*Under various provisions of OGP Act, 1964, Grama Panchayats have been empowered to levy taxes or fees for various services rendered by them. It is noticed that the power of levying tax by GPs has not been sincerely exercised to generate revenue to discharge the obligatory functions assigned to them under the*

OGP Act. Rather they are more dependent on Government both for the salary of their staff as well as for the services assigned to them under the OGP Act.”(Vide Para 6.16). Thus the Commission has squarely blamed the GPs for their alleged insincerity in exercising the taxing powers, which have been entrusted to them under the OGP Act.

But the moot point arises, is the Commission factually right in holding that the OGP Act 1964 has bestowed the taxing powers to the Grama Panchayats, which the latter have failed to exercise? Not so. For instance, *the Section 83 of the Act*, which the Commission a bit confusedly referred to in Para 6.6 while initiating their discussion on ‘*Taxation Powers and Sources of Revenue of Grama Panchayats*’ says in fact, “Subject to the provisions of this Act and the rules made thereunder it shall be competent for a Grama Panchayat for purposes of this Act to levy all or any of the following taxes, rates or fees, namely ...”. Then a list of 14 taxes, rates and fees is mentioned, which the Commission has faithfully reproduced. From a bare reading of Section 83, it would be evident to any lay reader that the competence of the GP to levy taxes is not an unqualified one, but hemmed in by the ‘provisions of the Act and rules made thereunder’. Not to talk of the Rules so made, several provisions of the Act itself are powerful enough to kill the initiative of a GP to levy a new tax. For instance, *the Section 90(b) of the Act* says that the Collector on his own or moved by a person who has been assessed for any tax, toll, fee or rate may review or revise the tax, toll, fee or rate. Then the *Section 91 of the Act*, which is characteristically titled ‘*Power of Collector to require the Grama Panchayats to impose tax*’, the Collector commands an omnibus authority to impose a new tax or enhance the rate of an existing tax and also to abolish an existing tax or to reduce the rate of an existing tax in respect of any Grama Panchayat. Further, following Collector’s order for imposing or enhancing a tax, a Gram Panchayat is required to ‘*proceed forthwith to carry out*’ this order ‘*as if the Grama Panchayat had itself taken a decision in that behalf*’. Once the order for the new tax or enhanced tax is passed by the Collector, Grama Panchayat can’t on its own ‘*abandon or modify or abolish*’ it [Section 90(b)]. However ‘*the Collector may at any time by notification, abolish or reduce the mount or rate of any tax levied or enhanced under this section*’ [Section 91(c)]. Under the circumstances, it is now as clear as daylight as to who has the real power in respect of taxation at GP level, the Grama Panchayat as the Second Commission would have us believe so, or the District Collector who has been so authorized under the OGP Act 1964?

Advice-1: In view of the Second State Finance Commission’s highly skewed understanding of OGP Act in respect of the taxing powers of a GP, and consequent blame-throw on GPs for their alleged failure to raise tax revenues, the Third Commission should remove such misunderstanding once and for all by way of putting the records straight as to how a GP is virtually powerless in exercising its so-called taxing powers under Section 83 of the Act vis-à-vis the circumscribing provisions made under Sections 90 and 91 of OGP Act. Besides the Commission ought to recommend removal of all those provisions of the OGP Act and Rules made thereunder, which constrain and constrict in any manner the freedom and authority of a GP to decide and carry out any dispensation felt necessary in respect of taxation within its jurisdiction.

2. On borrowing powers of a GP-

Needless to say, any Governmental entity, be it the Central Government or a State Government or a local Self-Government, can't register any progress in meeting the growing and multiplying needs of their respective constituent populations, unless they are enabled to augment their internal resources pool by way of raising non-tax revenues from various sources including borrowing. No modern economy can ever thrive without taking recourse to borrowing loans from different sources, especially to meet its capital expenditure, which is supposed to be the real engine of growth and prosperity. Ironically, the Second State Finance Commission maintains a conspicuous silence over the status of borrowing powers of a GP and progress, if any, achieved in pursuit thereof. The Commission ought to have taken notice of the fact that *not only the Section 95 of OGP Act 1964, but also a good many provisions numbering 13 (Rules 104 to 116) under OGP Rules 1968 dealt with various aspects of the powers and obligations of a GP in respect of incurring and discharging of loans. Besides several Registers and Forms, numbering 4 [such as Form 33-Loan Register; Form 22 Application by GP to Collector for Borrowing a Loan; Form 23- Refund by the GP of Government Loan along with Interest thereon; and Form 24- Statement of Payment of and Recovery of loan of GP loan] have been prescribed under OGP Rules for regular upkeep of loan accounts at GP level.*

The Section 95 of the O.G.P. Act 1964 says that Grama Sasan may borrow money from the State govt., any local authority, or any individual or organization registered or not to carry out the functions assigned to it. But this power to borrow is subject to certain conditions such as previous sanction of the State Government and compliance to the related Rules made under the Act. But the Rules have been framed in such a manner as to nullify the power of a GP to make any loan. For instance, **Rule 104 of Orissa GP Rules 1968** mandates a GP's application for loan to be submitted first of all to the Collector in Form No.22, who shall examine the proposal on the strength of 11 criteria and only after satisfying himself about its feasibility may forward it to the State Government. As per **Rule 105** the State Government has the discretionary powers to refuse or grant the full or part of the loan applied for or impose any other condition on the basis of the Act and Rules in respect of the application for loan. Thus, the power of a GP to borrow as per Section 95 of Act is severely limited by the discretionary powers of both Collector and State Government as elaborately mentioned under the above Rules. As a result of such contradictory provisions, no Grama Panchayat has been able to borrow a single pie from any source ever since the OGP Act came into force about 45 years ago. And it is further painful to record that no official discourse on Panchatiraj including the reports of two previous State Finance Commissions has ever discussed this naked anomaly afflicting the borrowing related provisions that still occupies a substantial space in our prime statute on Panchayatiraj.

The moot point arises here, why should so many provisions on borrowing that are inherently self-defeating and therefore not worth even a pie continue to stalk the pages of OGP Act and Rules, and why have the successive State Finance Commissions been maintaining an inexplicable, awkward silence over the matter to this day?

Advice-2: The Third State Finance Commission should grapple with the issue of dysfunctional provisions on borrowing found in OGP Act and Rules and take a firm position in the matter. Keeping in view the inescapable need for a local self-government to avail borrowing from various sources so as to meet its growing and multiplying capital needs, the Commission should recommend such measures of amendment in the Act and Rules as to fortify the power of a GP to borrow from any source on a bilateral basis just as Centre or a State do and to remove all limitations and encumbrances that are detrimental and debilitating to this power.

3. On Obligatory and Discretionary Functions of a GP-

The Second State Finance Commission at various places in their Report eulogize the host of obligatory and discretionary powers as entrusted to the Grama Sasan under the OGP Act 1964 but refrain from identifying and analyzing the basic flaws and anomalies, if any in the Act and Rules, which might account for non-performance of the said statutory functions. The *OGP Act 1964 in Section 44(1) describes 30 obligatory functions* to be discharged by a Grama Panchayat. There is a close resemblance between the said list of functions and the list of 29 subjects mentioned in 11th Schedule of the Constitution, which forms a part of 73rd Constitution Amendment. Then *Section 44(2)*, in conformity to the mandate of PESA Act of 1996 provides for the exercise by Gram Panchayats in Scheduled Areas of powers in respect of sale and consumption of intoxicants, ownership of minor forest produce, prevention of alienation of tribal land and control over money-lending to the Scheduled Tribes, subject to the control and supervision of Grama Sasan. The *Section 44(3)* says that the Gram Panchayats within the limits of the funds shall prepare plans for economic development and social justice and also implement them. The *Section 45 describes 25 nos. of discretionary functions*, any or all of which may be discharged by a Grama Panchayat, provided a resolution is passed to that effect by the majority of its members, previous sanction of the Government for the same has been obtained and/or the State Government direct the GP to undertake the same. Despite such massive array of powers and functions entrusted to a GP through the instrumentality of the above provisions, the GPs are however found to be active in respect of only a few matters and that too with little resources of their own. Such a lopsided position of the Grama Panchayats in Orissa can be explained only if one understands the real implications of the provision made under the next Section of the Act i.e. *Section 46 (Delegation of Duties to Gram Panchayats by a local authority or by Central or State Government)*. *As per this Section, if a particular matter is 'under the direct administrative control of any other local authority or of any department of the Central or State Government', and if such authority or department of any Government has not transferred or delegated by order the necessary duty or power to the Grama Panchayats, the provisions of this Chapter don't as such confer any power or impose any duty on Grama Panchayats to do this or to do that.*

Thus, a single provision made in the aforesaid Section 46 asking a GP to close its eyes to all the matters that any Governmental agency might be administering, practically nullifies the role a GP might feel inspired to play in respect of the obligatory and discretionary functions assigned to it under Sections 44 and 45. The moot point arises,

why and how long we should allow such mutually contradictory and exclusive provisions to coexist? And woe to the previous two State Finance Commissions, they have overlooked this glaring anomaly in OGP Act, 1964!

Advice 3- The Third Finance Commission ought to reflect at length on basic anomalies that crowd the text of the OGP Act and Rules and serve but the shrewd design of debilitating the Grama Panchayat in respect of discharging its statutorily assigned obligatory and discretionary functions. They should recommend a drastic purging of OGP Act and Rules of all the anomalous provisions like Section 46, which run counter to the mandate of 73rd Constitution Amendment for enabling the Gram Panchayat to ‘function as an institution of self-government’ in true sense of the term.

4. On Licensing Powers of a GP-

The Section 55 (Industries and Factories including dangerous and offensive trades) of OGP Act 1964 has listed out 24 items for which the Grama Panchayat has the power to issue licenses, subject to fulfillment of certain conditions. But the opening words of the Section 55 i.e. ‘With the previous sanction of the Collector’ rob the GP of any such power. The Section 56 (Control over places of public resort and entertainment) confers the power to the GP to issue permission or licensee to any person or party to use an enclosed space, building or tent situated within the Grama Sasan for the purpose of public resort or entertainment on a commercial basis, but this power can be exercised subject to ‘the previous intimation to the Collector’. The Section 57 (Power to levy fees for licenses under Sections 55 and 56) provides for the power of a GP to charge a fee against issue of any license or renewal thereof, but the maximum amount of any such fee is subject to determination by the Government by way of notification.

It is worthwhile to note that a Notification was made on the orders of Governor (*vide Notification No.1263 L.S.G. dated 8th Nov. 1950*) fixing maximum license fee leviable per annum by Grama Panchayats on such trades and industries, which allowed the GPs only to vary the amount against any within the maximum so fixed. As per *Section 153 (Repeals) of Orissa G.P.Act 1964*, any notification concerning licenses, permits, taxes, rates, tolls and fees etc. made under the repealed Act of 1948 shall remain in force until new provisions are made in that behalf. Thus the notification concerning the maximum amount of license fees made in the above order of 1950 remains still valid to this day. It is interesting to note that the maximum amounts for license fees so notified in 1950 are so low that the said notification has lost its practical relevance since long. For instance, the maximum license fee fixed for burning bricks is only Rs.20/- per 1 lakh of bricks, for a lodging house only Rs.5/-, or for storing petroleum upto 100 gallons Rs.3/- only.

The moot point arises, when the GP has no independent power either to issue a license or even to fix the amount of fees leviable against a license, and more so when a pitifully low regime of maximum fees as mentioned in a moribund notification of 1950 has practically rendered the collection of license fees dysfunctional, why should such provisions as contained in Sections 55, 56 and 57 continue to enjoy a pride of space in OGP Act 1964? And woe to the Second State Finance Commission, who for all its penchant for

exploring new taxes, rates and fees for enriching the Grama Panchayats, has ostensibly failed to locate such grossly anomalous and anachronistic provisions in OGP Act.

Advice 4- The Third State Information Commission should critique the provisions made under Sections 55-57 of OGP Act so as to ensure achieving two specific targets. First, the licensing power of the GP or its authority to determine the amount of license fee in respect of any industry or factory located within its jurisdiction shouldn't be compromised in any manner by the control by Collector or State Government. And second, the archaic notification of 1950 regarding maximum leviable license fees in respect of 24 kinds of industries and factories, which is already dysfunctional on account of its utter unfeasibility, needs to be withdrawn forthwith.

5. On powers of a GP in respect of its own property-

There are very many provisions in OGP Act and Rules, which severely restrict the power of a GP in owning and disposing a property, leading to loss of initiative on its part to manage a property optimally. Though the Second State Finance Commission has admitted the fact of declining trend in GP's income from such non-tax revenue sources as orchards and pisciculture (*Vide Para- 6.18, Chapter- VI, Report of 2nd SFC Orissa, 2004*), the Commission has however evaded the moot problem i.e. identification of real factors responsible for such declining income. As a matter of fact, the OGP Act and its Rules give no decision-making or operational independence to a GP in acquiring, managing or disposing of its property, and that is the real reason why the GPs have lost interest in augmenting income from the source of its property. *For instance, as per Section 73 of the Act the State Government has the power over allocation and withdrawal of any public property to Grama Sasan, under such terms, conditions, restrictions or limitations, as may be imposed by State the Government itself. As per Section 74, the Collector has been entrusted with the ultimate power in respect of acquisition of any land within the limits of Grama Sasan. As per Section 75 the GP has no power to dispose of any immovable property by sale, exchange, gift, mortgage or otherwise or by way of lease with permission for construction of permanent structures thereon without the prior sanction of the State Government. The Rule 97 says that without the approval of the price by the Collector a Grama Panchayat shall not acquire any immovable property under Section 77 of the Act. As per Rule 87 it is the Sub-Collector and BDO delegated by him, who control the process of leasing a GP property from beginning to end. As per Rule 88(a) no lease for 3 to 5 years and no lease for more than 5 years can be executed without the previous approval of the Collector and State Government respectively.*

The above are only a few instances of how the OGP Act and Rules have divested a Grama Panchayat of all powers in respect of acquisition, management and disposal of its property and concentrated them in the hands of Sub-Collector, Collector and State Government. Under such a bureaucratized property regime, a GP can't be expected to show any initiative or creativity, which is of course sine qua non for prudent and optimal management of any property by any entity. Nor such a top-down regime is at all compatible with the kind of self-governing role envisaged for Panchayats under 73rd

Constitution Amendment.

Advice 5- In view of the obvious failure of earlier State Finance Commissions in calling attention of the legislators and policy makers to the top-down, authoritarian provisions built into the OGP Act and Rules in respect of GP property, it is now incumbent on the Third State Finance Commission to make good the same. They should undertake a meticulous search in the OGP Act and Rules to list out as exhaustively as possible the very provisions therein, which allow for interference in and usurpation of the legitimate role of elected representatives at GP level in respect of property management by the bureaucrats. Besides they should recommend abolition at one stroke of all these superfluous, obstructive provisions in the larger, overdue interest of squaring up Orissa's Panchayat legislation with the letter and spirit of 43rd Constitution Amendment.

6. On Powers of Control over GP-

Lamenting the absence of devolution of powers to PRIs in Orissa, the Report of Second State Finance Commission, Orissa observed and rightly so, "*The mandate assigned by the 73rd amendment of the Constitution to endow the Panchayati Raj Institutions with such powers and authority as may be necessary to enable them to function as institutions of self – government, has so far remained in letter only, cited conveniently while talking about decentralization of power and forgotten quickly once the discussion is over.*" (**Para 4.37 Report of Second State Finance Commission, 2004**). Then the Commission showed in a tabular form how the 29 subjects of Eleventh Schedule, which should have by now been transferred to PRIs in keeping with the mandate of 73rd Constitution Amendment are still administered by an official hierarchy remaining under the control of State Government. No doubt, it is a bold confession by a constitutional body as to how the materialization of 73rd Amendment in Orissa remains a non-starter even today. But for all said and done the Commission has failed to locate the real, more elementary reasons, that have bedeviled and shall continue to bedevil the intended transfer of power to PRIs from the Governmental agencies. They in fact abound in OGP Act 1964 and Rules 1968 made there under. Even if the State Government transfer by way of administrative circulars all the 29 subjects of 11th Schedule, still then such transfer would remain on paper only. Because, the OGP Act and Rules which play an overarching role in setting a master-servant behaviour pattern between the officialdom and PRI functionaries at different levels, would be there still alive and active with their authoritarian legal-administrative framework, sufficient to negate and nullify any top-to-down transfer of power ordered from above by administrative fiats. For instance, *the Chapter-XI of OGP Act titled 'Control' contains Sections 109 to 121* has codified in crystal clear terms as to how the elected functionaries of a GP including Sarpanch and Naib-Sarpanch are to behave as subordinate to salaried bureaucrats at different levels. A characteristic quote from the said Chapter shall suffice to drive home the point at issue. *The Section 114 (Power of Sub-Collector in respect of certain resolutions and orders of Grama Panchayat) in its subsection (1) says, the Sub-Collector may, 'suo motu or on a reference by the Sarpanch under Section 20' has the power to rescind, modify or confirm any resolution or orders passed by the GP, if in his opinion that resolution or order attracts the provisions of Section 20. As per its subsection (2), pending the disposal of*

any proceeding under Section 20, the Sub-Collector may make any or all of the following, such as (i) suspend the operation of the resolution or order; (ii) prohibit the doing or continuance by any person of any act, and (iii) direct the GP to drop the resolution altogether. And as per subsection (3), the GP has of course a power to take a resolution against the above order of the Sub-Collector and on the strength of it to appeal before the Collector within 30 days of the Sub-Collector's order. The Collector after giving opportunity of hearing to the GP may cancel, modify or confirm the order passed by the Sub-Collector. Given this legal provision to stay on, will any GP ever dare to question the Sub-Collector or Collector on any issue, no matter how much transfer of power is proclaimed through administrative circulars issued from atop from time to time in the name of compliance to 73rd Amendment?

The above instance was culled from Chapter-XI of OGP Act just to illustrate the point at issue. As a matter of fact, the whole body of OGP Act and Rules is permeated by an all-out design by the State to temper and tame the GP, the lowest, but most crucial substratum of our polity, by way of endowing authority on every layer of bureaucracy to lord over it. Needless to say, the OGP Act and Rules in their present form are not only incompatible with the letter and spirit of 73rd Amendment but insuperable obstacles on the path of its realization.

Advice 6- Instead of getting bogged down in the peripheral discourse on how much transfer of power to PRIs in terms of subjects and departments has been effected or not, the Third State Finance Commission ought to focus on identifying the debilitating and dis-empowering provisions like the ones noticed in Chapter-XI (Control) which crowd the OGP Act and Rules through and through and recommend their immediate abolition in the interest of calibrating the State legislation on Panchayatiraj in conformity to the mandate of 73rd Amendment.

7. Amendment of Article 203 of Constitution concerning State Budget-

This matter is not only relevant to Dept.of Panchayatiraj as such, but also all other Departments and agencies of Government, whose estimates of expenditure are presented in the form of 'Demand for Grants' as a part of Annual Financial Statement (Budget) in the State Legislative Assembly. Much as we may wish to see that any Department dealing directly with social welfare such as the Department of Panchayatiraj is allotted more and more money in the Budget to cater to the growing and multiplying developmental needs of the people, there is a constitutional cap imposed on the Assembly's power to vote for any increase in the Demand for Grants. While the components forming 'Charged Expenditure' are completely beyond the voting power of the Assembly, those forming the Other Expenditure (Demand for Grants) can be voted, subject to reduction of the proposed amount against an item (so-called 'Cut Motions'), and not for raising it. The sums Charged on Consolidated Fund of State, called Charged Expenditure comprise the salaries and allowances of the personnel of legislature, executive and judiciary, litigation and related expenses and the debt charges of the State. Besides the State legislature may prescribe any other item to fall under the Charged Expenditure. Only after the items of charged expenditure are set apart as the reserved and inviolable (non-voted) component of the total budget, the remaining component, whatever be its magnitude, is distributed among the welfare oriented Demands for

Grants for different Departments. Thus, the current budgetary procedure as laid down in the Constitution doesn't allow the State legislature to raise the estimated amounts for Demands for Grants. *The Article 203 has 3 clauses; the clause (1) keeps the charged expenditure outside the voting power of the Assembly, the clause (2) allows only cut motions on other expenditure (demand for grants) and clause (3) provides for recommendation of the Governor before any demand for grant is placed in the legislature.* It is worth mentioning here that Article 113 of the Constitution lays down a similar procedure in respect of Union Budget.

It is true that no Parliamentarian or Constitutional expert of the country has so far pointed out this serious anomaly in our Constitution, which is a legacy of the colonial Government of India Act 1935. However, unless and until it is removed and all the components of budget falling under both charged and non-charged heads are fully subject to control by the legislature, we can't push forward our aspiration for progressive increase in the proportion of developmental expenditure vis-a-vis the expenditure for administration and debts.

Advice 5- The Finance Commission, Central or State, is an appropriate Constitutional forum for critiquing the provisions made under Article 113 and Article 203 of Constitution that prohibit the voting in the legislature on 'Charged expenditure' and limit the voting on 'Demand for Grants' only to 'cut motions' and for raising the debate around it to a higher pitch involving various other Constitutional bodies. The principal aim of this debate shall be to find out a proper answer to the question how far is it justified in a democracy like ours to keep almost the whole of the budgetary process at Central or State level outside the voting power of the respective legislatures. Because, in no other democracy of the world the legislature is so much deprived of its control over the budgetary process as in India .

8. Miscellaneous-

(a) Mr. Pradip Pradhan enquired as to whether it was within the power and competence of a State Finance Commission to discuss issues and recommend measures, that may require the amendment to Constitution. Mr. Chitta Behera replied that the State Finance Commission, be it Central or State, is first of all a Constitutional body. A State Finance Commission, for instance, is created as per Article 243(I) of the Constitution. One of its mandates as mentioned under the said Article is to recommend, "*the measures needed to improve the financial position of the Panchayats.*" Thus, if in the opinion of a Commission an amendment of the Constitution would be required to achieve the said objective, they can pretty well recommend it.

(b) In an implicit effort to contradict the opinion of Mr. Chitta Behera that the OGP Act itself puts limits to the taxing powers and borrowing powers of GPs, Mr. Swapneswar Baya, a distinguished Member of the Commission in course of his talk started reading out Section-83 of the Act, where it is mentioned, "Subject to the provisions of this Act and the rules

made thereunder it shall be competent for a Grama Panchayat for purposes of this Act to levy all or any of the following taxes, rates or fees, namely ...” . He was implicitly pleading that the Act gave adequate powers to a GP for imposing any of the taxes as mentioned under the above Section. Mr.Behera at this point intervened to request him to read out the other related provisions of the Act coupled with the Rules, so that the participants would get a full and clear picture of whether the OGP Act and Rules put any limits to the taxing powers of a GP or not. Then, a commotion followed in the house and Mr.Baya switched over to the next topic of his talk. Mr.Behera, unrelenting in his position, however, commented that a Commissioner or a senior Officer like Mr.Baya shouldn't present a partial and one-sided view of any instrumentality of the State in his enthusiasm to hold out a rosy and cozy picture about it.

(c) Allaying the apprehension expressed by Mr.Chitta Behera that the present Commission like its predecessors might choose to refrain from treading the troublesome course of discussing and recommending measures that involved amendment to OGP Act or to Constitution, the Chairman of the Commission Prof. Sudhakar Panda assured that it was well within the ambit of Commission's ToR to reflect on the issues the like of which were deliberated in course of the day. In response, Mr.Behera thanked the Chairman for his candid assurance and hoped that the Report of the Third Finance Commission would prove a real path-breaking one.

Chitta Behera, dt 12th Sept. 2009
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