

**A Plea for Transfer of power and resources to Panchayatiraj
Institutions to enable them to carry out effectively
the measures for disaster management and social justice**

A three-tier system of governance (Centre, State and Panchayat) is supposedly in place throughout our country. It is further believed that this three-tier system of governance has taken a concrete and stable shape following the operationalisation of 73rd Constitution Amendment of 1992. But as a matter of fact, only the two upper tiers of our polity, namely Centre and States are found to be in possession of real powers and resources, while the PRIs from Zilla Parishad down to Gram Panchayat don't enjoy any of them in reality, with the result being a conspicuous failure on their part to discharge their duties towards the people in villages, by whom they were elected. So there exists an imperative need to entrust the PRIs with the real powers and resources, which would enable them to play their due role in matters of administration and management of multiple affairs concerning the life of the people at grassroots level.

With this perspective in view, a series of awareness camps and mass rallies were recently held in different parts of the State involving the cross-sections of intelligentsia such as teachers, students, journalists, workers of SHGs, NGOs and Cooperative Societies besides the representatives of PRIs. In each of the awareness camps, a separate charter of issues peculiar to the concerned area was drawn up and an action plan for future built up thereon. Moreover, based upon the said charters, separate sets of Memoranda were drafted and finalized in each such camp for presentation to the administration at the appropriate level for necessary action at their end.

The above-mentioned awareness camps were held in 4 important places of the State as follows:

a.	At Khurda	By Khurda Action Forum	On 20 April 2006
b.	At Kanas, Puri	By Puri District Action Forum	On 27 April 2006
c.	At Kendrapara	By Kendrapara Dist. Action Forum	On 15 May 2006
d.	At Bhabanipatana	By Kalahandi Action Group	On 4 June 2006

The gist of the sub-themes of 4 Memoranda so prepared is mentioned hereunder .

1. Disaster Management:

- 1) The Gram Panchayat to be entrusted with the power and resources to conduct the disaster risk management training programmes on a regular basis;
- 2) The Gram Panchayat to be entrusted with the power and authority to conduct surveys of damage caused by a disaster to houses, crops and common property resources in the locality;
- 3) The Gram Panchayat to be entrusted with the task of conducting all short-term relief and long-term rehabilitation programmes in the wake of a disaster;
- 4) The Gram Panchayat to be entrusted with the job of preparing the contingency plan for disaster management and of its periodical updation;

- 5) The Gram Panchayat should be vested with the power to requisition emergency equipments and accessories like boats and automobile etc. necessary to cope with the felt needs in the context of a disaster;
- 6) The Gram Panchayat should be authorized to maintain an Emergency Fund to cater to the immediate needs of the people and the areas affected in a disaster;
- 7) In stead of the current provision of a Block being considered as an administrative unit for the purpose declaring an area as 'drought-affected', a GP should be held as a unit for the said purpose;
- 8) The GP should be entrusted with the task of proper management including renovation and use of all water resources including traditional water harvesting structures;
- 9) The GP to be entrusted with the power of monitoring and supervision of the health care system of the Government so far it relates to the GP; and
- 10) Each village should be provided with a Shelter Building, to be managed by the GP to provide accommodation to the needy people at the time of disaster and to serve as the venue of school, health centre, Gram Sabha or other such community needs in normal times.

2. Definition of Calamity to be widened to include chronic scarcity of minor forest produce and millets:

As is well-known, a massive chunk of population in Western and Southern Orissa, especially belonging to ST and SC classes heavily depend upon minor forest produce and a variety of millets for their bare survival. And these produces are either available freely in the hills or forests or grown by the people with little effort in the natural terrains. It so happens that in some years, due to various reasons there takes place lingering scarcity of minor forest produce and millets in this region. As a result, the overwhelming majority of people in this region, who are not as such accustomed to switching over to other food crops or cash horticulture as an alternative source of livelihood, do suffer miserably for months on end. But as is well-known, the scarcity of minor forest produce and millets doesn't fall under the category of 'calamity' as such within the meaning of Para-4 (Classification of Natural Calamities) of Orissa Relief Code 1980. The Code mentions 'drought, flood, cyclone and tidal disasters, earthquakes, volcanic eruption etc.' as instances of calamity having some sort of 'fairly widespread' impact on the land and population. It seems the existing Orissa Relief Code which had its origin in the colonial Famine Code that dates back to 1901, gave recognition only to those conditions of distress that affected the mainstream populations in the coastal tracts of Orissa while ignoring the other, equally disastrous conditions that affected the most backward and marginalized sections of population in the State i.e. the tribes and hills-men. Due to this skewed perception of calamity dominating the official thinking, there is no Governmental provision for any relief or rehabilitation measures addressed specially to meeting the scarcity of minor forest produce or edible millets, even though such a state of scarcity puts the life of a vast mass of people in Southern and Western Orissa out of gear for months on end.

Under the circumstances, while there is an ongoing effort to replace the age-old Relief Code by a new, comprehensive Policy for Disaster Management, it is just warranted that the definition of disaster or calamity be made inclusive enough to cover the persistent scarcity of minor forest produce and edible millets as found in the Southern and Western regions of Orissa within its ambit, and the Central Government and State Government formulate appropriate kinds of relief, rehabilitation and restoration schemes to manage it.

3) Structural streamlining of Palli Sabha necessary:

Ironically, the Palli Sabha which constitutes for all practical purposes the real, material sub-structure of Gram Sabha has not been provided with either a structure of its own or necessary legal authority to enforce its decisions. The Section 6 of Orissa Gram Panchayat Act 1965 (Functions of Palli Sabha) provides under its Sub-Section (6) that ‘Palli Sabha at its annual meeting in February each year’ shall ‘give its recommendations to the Gram Panchayat’ in respect of ‘(a) the development works and programmes that may be taken up during the ensuing year; and (b) the annual budget estimate submitted by the Gram Panchayat ..’. So much for the critical role assigned to the meeting of a Palli Sabha. Again, as per its Sub-section (2), all the adult villagers living in an area covered by a Palli Sabha, who are registered as voters for the purpose of Assembly Election under People’s Representation Act 1950 shall constitute the Palli Sabha. But the Act nowhere provides for the quorum for the meeting of a Palli Sabha. Rather, the Sub-section (5) says inter alia, ‘The members present at any meeting of the Palli Sabha shall form the quorum for such meeting’. Thus primarily due to the absence of a legal compulsion coupled with other vicious factors, the common villagers don’t feel the obligation to attend a meeting of a Palli Sabha, and neither the elected representatives of Gram Panchayat nor the officials associated with the functioning of Palli Sabha/Gram Sabha do feel the obligation to ensure the attendance of as many villagers as possible in the meeting of a Palli Sabha. As a result, very many decisions critically bearing on the life of the villagers and of the village are being taken in an arbitrary manner by a few persons having vested interests and subsequently passed off as the unanimous decisions of Palli Sabha, without the overwhelming bulk of a Palli Sabha membership being at all aware about all this. If the foundational sub-structure of our system of PRIs lacks thus in substance, the latter is bound to collapse sooner or later, and the current chaos and mess that have gripped the PRIs is but a pathological symptom of this unfolding tragedy.

It is therefore imperative that the Section 6 of Orissa Gram Panchayat Act 1965 be so amended as to ensure firstly, a sizable quorum for the attendance in each meeting of Palli Sabha i.e. at least 50% of its total membership, and secondly, the obligation of the Panchayat representatives to see that a Palli Sabha meeting is never postponed due to lack of quorum.

4) To ensure demographic and gender equity in the meetings of Palli Sabha/Gram Sabha:

As is well-known, the Section 5(2) of Orissa Gram Panchayat Act 1965 provides for quorum for a Gram Sabha meeting to be only 10% of the total membership of a Gram Sasan, and further for no quorum to be required in its next meeting if the first meeting couldn't be conducted due to lack of quorum. But the Section 5(3) entrusts very crucial functions to Gram Sabha, such as programmes and works, annual budget, levying of taxes and fees and drawing of agricultural production plans etc., which in order to be carried out properly need the consent of the village population as a whole. As a result of this queer provision, only a small fraction of the village population, that too those having some or other vested interests get together in the name of Gram Sabha and take all the decisions on its behalf, while the overwhelming majority of the villagers may not be at all aware about all this.

Similarly, though the women constitute more or less half of the population of a village or of the ward of a village, the Act nowhere provides for a quorum for the participation of women members in the meetings of either Palli Sabha or Gram Sabha. Needless to say, due to the age-old cultural prejudices of a patriarchal mindset, which still pervades the length and breadth of our society, the common women in general, and especially those in coastal districts of our State do keep away from the meetings of Palli Sabha or Gram Sabha, letting thereby the male folk to take all decisions on their behalf even when these decisions very much impinge on their gender rights and interests.

Under the circumstances, the Sections 5 and 6 of Orissa Gram Panchayat Act be so amended as to provide for (a) a quorum of at least 50% of the total membership of Palli Sabha or Gram Sabha, as the case may be, to be present in any of its meetings, and (b) a quorum of 50% of the total attendance in a meeting of Palli Sabha or Gram Sabha, as the case may be, to be reserved for women members of the respective body in any of its meetings.

5) Effective Implementation of the Powers by GP as given under OGP Act 1965

The OGP Act 1965 has entrusted a Gram Panchayat with a wide array of legislative, executive and judicial powers, which however remain dysfunctional due to the incongruities in the Act itself. But to-day's situation calls for effective operationalisation of the said powers of GP, if the GP is at all to act as a self-governing institution in respect of all the affairs of the concerned village/villages. Specifically speaking, the following powers as given under OGP Act 1965 should be left to the GP to exercise without any interference from the upper layers of administration.

a) The Obligatory Functions: The Section 44 occurring under Chapter VI of O.G.P. Act 1965 (Powers, duties and functions of Gram Panchayat) lists out 30 subjects as 'Obligatory Functions of Gram Panchayat' (numbered as A to Z4), which include construction and management of public streets, removal of unauthorized encroachment, system of drainage, supply of drinking water, scavenging and disposal of rubbish and pollutants, epidemic management, regulation and abatement of offensive and dangerous trades, management of commonly used grazing and other lands, maintenance of soil conservation works, regulation of fairs, festivals, markets and stands for motor vehicles, schemes for agriculture, minor forest produce, small-scale industries, rural housing,

poverty alleviation programmes, women and child welfare, public distribution system and above all maintenance of community assets.

b) Discretionary Functions: The Section 45 mentions a list of 25 subjects over which the Gram Panchayat can exercise its discretionary power i.e. if the GP wants to. The list includes maintenance of village forest, veterinary hospital, slaughter houses, reclamation of waste lands and cultivation of fallow lands, village cooperatives, calamity relief, management of libraries, entertainment units and clubs for sports and recreations, organisation of fire services, maternity and child welfare centres, establishment of granaries, running of remunerative cottage industries and trades, maintenance of Dharmasalas and rest houses, public vaccination and inoculation, adult education and primary schools, prevention of gambling and implementation of prohibition, and construction and maintenance of bunds etc.

c) The Licensing Powers: The Sub-section (1) of Section 55 (Industries and Factories including dangerous and offensive trades) says, “With the previous sanction of the Collector and notwithstanding anything contained in any other law for the time being in force, a Gram Panchayat may notify that no place within the local of the Gram Sasan shall be used in course of any trade, business or calling without a license granted by it and except in accordance with the condition specified in such license” for any one or more of the 24 purposes mentioned thereunder (numbered as A to X). This licensing power of a GP extends to such purposes as including washing ghat, boiling camphor, preparing chua, melting tallow or sulphur, dissolving silver and gold with nitric acid, processing of manure, offal, bones, hides, fish, skins, horns and rags, washing or drying wool or hair, preparing fish oil, hydrogenated oil, ghee, butter and fat products, making of soap and oils, making of sago, kedua water, artificial manure, sugar candy and jaggery, manufacturing of leather goods and lac, beedi-making, making of gun-powder and fire-works, burning of bricks, tiles, pottery or lime, running of Dharmasala and rest houses, hotel and restaurant, eating-house, tea and coffee houses and boarding and lodging houses, keeping of a shaving or hair-dressing saloon, running of piggery, goatery or cattle sheds, preparing flour and flour-made foodstuff, manufacturing ice or aerated water, sale of timber, coal, hay, straw, jute, coal or any other dangerously inflammable material, storing and selling of grain, groundnut, chillies or jaggery in wholesale, storing of any explosive or combustible material including kerosene, petroleum, naptha or any inflammable oil or spirits, manufacturing of anything from which offensive or unwholesome smell arises, using any fuel or machinery for industrial purposes, and doing of anything which is likely to be offensive or dangerous to human life or health or property. It is worth explaining here the last mentioned item, numbered as (x) under sub-section (1). As a matter of fact, a Notification dated 8th of November 1950 made by the Government of Orissa as a follow-up to Orissa Gram Panchayat Act 1948, had contained a Chart mentioning the maximum amount of license fees per annum to be charged by the Gram Panchayat against the various items, and the said Chart had provided for license fee for manufacturing of arrack (distillery), covered under the item that dealt with any act of processing that was ‘offensive or dangerous to human life or health or property’. Since the Orissa Gram Panchayat Act 1965 maintains the same item as subject to license by the

Gram Panchayat, it is clear beyond a shade of doubt that the power to grant a license for manufacturing of country liquor lies with the Gram Panchayat as per the existing law.

Further the sub-section (3) of Section 55 of OGP Act 1965 says, “The Gram Panchayat may, by an order and under such restrictions and regulations as it thinks fit, grant such license or refuse to grant it”.

d) Panchayat Police and Adalti Panchayat: The Section 153 of OGP Act 1965, which provided for repeal of Orissa Gram Panchayat Act 1948, did however carry a saving clause i.e. sub-section 1(e) which said, “the provisions in respect of Panchayat Police and Adalti Panchayat contained in Chapters VI and VII of the said Act (*Act of 1948*) and in Scheduled II and III thereto, shall subject to the provisions of S.154 continue to apply as if enacted in this Act”. And Section 154 (Saving in respect of Panchayat Police and Adalti Panchayat) provided for continuance of these two institutions within the jurisdiction of and under the overall authority of Gram Panchayat. As is well known, the system of Panchayat Police would ensure quick deterrent action against crimes in a rural area while the Adalti Panchayat could guarantee justice, fast, fair and least-cost to the villagers. However, no step has been taken by the State Government since the enactment of the OGP Act 1965 to operationalise these two vital institutions (one having executive, and the other having judicial power) at Gram Panchayat level.

6) No bureaucratic overlordship on Panchayats:

As is well-known, prior to the commencement of 73rd Constitution Amendment of 1992, a Panchayat used to be superseded and even dissolved or its functionaries suspended and dismissed arbitrarily by the district administration and State Government as and when they liked. But the 73rd Amendment provided for a statutory period of 5 years for every Panchayat (vide Article 243E of Constitution). However, the Orissa Gram Panchayat Act 1965 contains very many provisions which militate against this constitutional mandate by way of providing arbitrary handle to the bureaucrats at various levels even to supersede and dissolve a Panchayat along with suspension and dismissal of its elected functionaries. The Section 115(1) of OGP Act gives power to District Collector to suspend the Sarpanch or a Naib-Sarpanch from office. Its sub-section (2) gives power to the State Government to remove him altogether. The sub-section 6(a) gives power also to Collector to remove from office not only Sarpanch or Naib-Sarpanch but also any member of Panchayat. Under the said sub-section the Collector may declare a member of Panchayat ineligible even to contest the election. Again, as per Section 116(1) the State Government can suo motu dissolve a Gram Panchayat as and when they like. And as per Section 117(1), the State Government may supersede a Panchayat altogether. So long these provisions giving discretionary power to the bureaucrats to take any sort of disciplinary action against Panchayats and their functionaries exist in OGP Act 1965, the Panchayats can't be expected to grow into self-governing institutions as contemplated under Article 40 of the Constitution or under 73rd Constitution Amendment. Any disciplinary action, if at all needed to be taken against a Panchayat or any of its functionaries should have its sanction in the Resolutions of Palli Sabha or Gram Sabha. And any disciplinary action so needed should be executed by the Panchayats at higher

level i.e Panchayat Samiti or Zilla Parishad, not by the bureaucrats as happening at present.

Under the circumstances, to enable the Panchayats to grow into self-governing institutions as contemplated by the Constitution and 73rd Amendment, the OGP Act 1965 should be drastically amended so as to withdraw all disciplinary and penal powers from the bureaucrats of any level, vest the Gram Sabha/Palli Sabha with the right to recall the defaulter functionaries and make the upper tiers of Panchayatiraj the executers of the disciplinary and penal action against a Panchayat or its functionaries.

7) No tinkering with the Resolution or Micro-plan adopted by Palli Sabha/ Gram Sabha by any bureaucratic authority:

One of the chief reasons as to why the villagers choose to abstain from the meetings of Palli Sabha or Gram Sabha as the case may be, is a wide array of provisions of the OGP Act 1965 itself that allow the bureaucrats as and when they please to override the resolutions, plans or budgets as adopted by the Palli Sabha or Gram Sabha. The quintessential message that these restrictive provisions convey all the time to the villagers and even to their elected representatives is that whatever may be decided by a Palli Sabha or Gram Sabha, it can be just undone by a non-elected bureaucrat at Block, Sub-divisional or District level. For instance, the Section 109 of the OGP Act says, "Collector or such other officer or person specially authorized in that behalf by the State Government shall exercise general powers of inspection, supervision and control over the exercise of powers, discharge of duties, performance of functions by the Gram Panchayat'. Another instance of such omnibus control by the non-elective executives over the elected Gram Panchayat is the Section 114(1) of the Act, which says, "The Sub-divisional Officer may, suo motu or on a reference made by the Sarpanch may rescind, modify or confirm any resolution or orders passed by the Gram Panchayat". There are in fact numerous provisions that stalk through the text of the OGP Act 1965, which do nullify the sanctity of the powers given under the Article 243G of the Constitution to the Panchayats as units of self-government for 'preparation of plans for socio-economic development and social justice' and 'implementation of schemes' made there-under.

Under the circumstances, the OGP Act 1965 should be comprehensively revised in order to remove all manners of control by the non-elective bureaucratic bodies over the powers and functions of Gram Panchayat, which, as aptly envisaged under the Constitution, is supposed to act as a self-governing unit of the country's overall polity.

8) MP and MLA LAD Funds to be used under the aegis of GP:

Presently the MPs and MLAs, who are provided each with Rs.2 crore and Rs.50 lakh respectively per year under the head 'Local Area Development Fund' are supposed to spend such amounts in areas which fall under Gram Panchayats and urban local bodies. But neither a GP nor an urban local body has any say or control or over the manner in which such amounts are being spent. As a result, quite often such amounts are spent for

the purposes which may not be the priorities of the concerned villagers or the concerned GP. Due to lack of supervision by the GP, the LAD money is also spent in an arbitrary manner and gets misappropriated too.

In order to ensure Panchayat control over all developmental works taking place within its jurisdiction and to ensure transparency and accountability in fund utilization, the LAD Funds should be implemented through Panchayats.

9) GP to be given the power to provide land to the landless:

Each GP should be entrusted with the authority to survey and identify the status of landlessness among the poor SC and ST people in a village and suggest allotment of suitable Anabadi and forest land available in the village to them for homestead and occupational purposes. As a matter of fact, the suggested measure fully concurs with the Eleventh Schedule of the Constitution vide Point 2, which describes the power of the Panchayat over 'Land improvement, implementation of land reforms, land consolidation and soil conservation'.

10) Proactive role of Gram Panchayat in checking involuntary migration:

It is being observed that the villagers male and female being faced with distressful conditions, especially in Southern and Western Orissa are migrating in increasing numbers to far-off places in and outside the State in search of a bare livelihood. Quite often they leave behind old parents and young children to languish in a state of utter starvation and destitution. The Panchayats are unable to provide these migrants with some job or the other, nor are they able to take care of the aged and young, left behind in the village. Moreover, out of their bitter experience over the years, the people in the villages have lost all faith in the capacity of the Panchayats to cater to their bare needs of life and livelihood. But as a matter of fact, the Section 45 of OGP Act 1965, which describes 25 nos. of discretionary functions of a Gram Panchayat (i.e. as and when GP likes to exercise), mentions at its Point (m) 'establishment and maintenance of works for providing employment in time of scarcity and establishment of granaries'. Again the Point (y) mentions 'any measure not hereinbefore specifically mentioned which is likely to promote public safety, health, convenience or general welfare', as a discretionary function of the GP. But in ground reality, the power and resources to initiate any scheme for job creation or for general welfare of any kind are only available with the Central and State Governments. And in naked justification of such usurpation of power by the Government, the Section 46 of OGP Act says, 'Nothing in this chapter shall be deemed to impose any duty or confer any power on the Gram Panchayat with respect to any matter which is under the direct administrative control of any other local authority or of any department of the Central or State Government, unless, such duty or power has been transferred or delegated to the Gram Panchayat by the order of the local authority of the Central or State Government, as the case may be'. Owing to such contradictory provisions in the OGP Act 1965, the Gram Panchayat feels really handicapped to take any decision on its own for undertaking any scheme, be it for employment generation or for any matter concerning general welfare.

Under the circumstances, the OGP Act 1965 should be so amended as to remove the statutory handicaps placed on a GP to carry out any programme of general welfare including employment creation with the help of the natural and monetary resources and technical know-how available within the Panchayat itself. The Eleventh Schedule of the Constitution, which came up as a part of the 73rd Constitution Amendment of 1992 enumerates 29 subjects, which should have by now been transferred to the Panchayats. Steps should therefore be taken at the earliest to endow the Panchayats with the power and resources to tackle any problem and mitigate any crisis on its own as and when it arises.

11) Entire system of PRIs to remain free from partisan politics:

It has been observed that the current provision and practice of fighting Panchayat elections by the candidates on party tickets and party symbols, as applicable to Zilla Parishad and Panchayat Samiti, have severely and adversely affected the day-to-day functioning of Gram Panchayat, Gram Sabha and Palli Sabha too. As a result, the decisions of Gram Sabha or Palli Sabha and all manners of implementation thereof have taken on partisan complexion and become a frequent and fertile source of conflict and discrimination along the partisan lines, pushing thereby the common people who are interested in the overall development of the village itself out from the ken of Panchayat activities. But a Panchayat body being a unit of self-government, as defined under Article 40 and Article 243G of the Constitution, is required to function in a holistic manner i.e. by way of involving the entire population of a village irrespective of their caste and religion, gender or status, creed or conviction in its decision-making and activity processes. Thus the provision for contest on Party lines with the use of party tickets and party symbols in the Panchayat elections pollutes the whole milieu of Panchayati Raj with obnoxious, partisan spirit which lingers and thickens all through in the aftermath of the elections and thereby defeats the very wholesome philosophy of Panchayati Raj. Sooner such a provision for party politics goes, the better for the health of the Panchayati Raj as a whole.

Therefore, all the three principal laws concerning Panchayati Raj in our State, namely Orissa Gram Panchayat Act 1965, Orissa Panchayat Samiti Act 1959 and Orissa Zilla Parishad Act 1991 stand in need of amendment so as to ensure the electoral process for formation of either of these grassroots bodies to remain free from all manners of partisan politics.

12) Debilitating Provisions relating to GP's financial powers to be removed from OGP Act 1965:

The Gram Panchayat in order to be able to manage its finances independently and autonomously should be backed by the enabling provisions in the OGP Act. But as is well-known, there are a number of provisions in the Act, especially in its Chapter IX (Finance), which work contrary to the principle of financial self-management by the GP. First of all, the Section 95 (Power to borrow) says that the Gram Panchayat can't borrow

money directly from any source without the previous sanction of the State Government. Secondly, the Section 100(2) provides for audit of Gram Fund as per the provisions of Orissa Local Fund Audit Act 1948, a fact which means that the State Government shall maintain a remote control of the financial matters of a Gram Panchayat. Thirdly, as per Section 100(3) the Director of Gram Panchayats, shall be the Examiner of Local Accounts and the State Government may, by notification, appoint any number of Deputy or Assistant Examiner of Local Accounts, who can conduct audit, re-audit or special audit of the accounts of a Panchayat at any point of time, and may take to task the Panchayat on any flimsy ground of deviation in accounts. All these debilitating provisions as found in OGP Act 1965 have not only stifled the spirit of initiative of the Panchayats to arrange and manage its finances to suit the interests of the people of the Panchayat, but also failed to check corruption and malpractices in respect of Panchayat money. As a matter of fact, such archaic provisions for control of Panchayat finances by the State Government had originated in the colonial times when the British rulers having no faith in our people's capacity for self-management in any respect, had designed such remote control mechanism to suit their hegemonic interests. Somehow such provisions got their way into post-independence laws on Panchayati Raj too, and do still persist to this day. Prior to the enactment of 73rd Constitution Amendment of 1992, maybe these provisions had some relevance, since the PRIs didn't enjoy any statutory tenure and were subject to the power of the State Government to supersede and dissolve the Panchayats as and when they pleased. In view of the felt need for a new set of rules to govern the management of finances by the self-governing Panchayats, the Article 243J of the Constitution, which of course formed a part of the 73rd Amendment, provided, "Audit of accounts of the Panchayats:- The Legislature of a State may, by law, make provisions with respect to the maintenance of accounts by the Panchayats and auditing of such accounts". However, the Government of Orissa hasn't till date taken any step in the direction of bringing necessary legislative reform of the old financial and auditing procedures governing the Panchayats.

Under the circumstances, to ensure autonomy and betterment in financial management by the Gram Panchayat and in keeping with the Constitution's overall philosophy of self-governing Panchayats, the Chapter IX (Finance) of OGP Act 1965 should be thoroughly amended so as to remove all manners of remote control by the State over the Panchayat finances and to insert an in-built mechanism of auditing of Panchayat finances into the PRI system itself.

13) Resource Transfer to Panchayats to be effected as ordained under the 73rd Constitution Amendment:

As is well-known, following the 73rd Constitution Amendment, the Article 243-I enjoined upon each State to constitute a State Finance Commission once in 5 years for the purpose of recommending (a) distribution of the proceeds of taxes and non-tax revenues between the State and Panchayats, (b) taxes and non-tax revenues that can be collected by the Panchayats, and (c) grant-in-aid payable to the Panchayats from the Consolidated Fund of the State, along with the measures needed to improve the financial position of the Panchayats. In Orissa the First Finance Commission was constituted under the

chairmanship of Dr. Baidya Nath Mishra in 1996, followed by the Second Finance Commission under the Chairmanship of Mr. Trilochan Kanungo on 5th June 2003. The Second Finance Commission which made certain recommendations on resource transfer to the Panchayats had presented their Report to the Governor Orissa on 29th of September 2004. A few months away, two years shall be completed since the said Report was submitted. But the State Govt. is yet to publicise the said Report along with their 'Action Taken Report' before the Assembly. While the States like Kerala, Karnataka and Maharashtra have already done a good deal in effecting the resource transfer to Panchayats as recommended by their respective State Finance Commissions, the Government of Orissa is still dilly-dallying over whether to publicise at all the Report of the Second Finance Commission, let alone carry out any genuine measure of resource transfer to the Panchayats, as directed by the Constitution.

It is therefore imperative that the State Government of Orissa should publicise at the earliest the Report of the Second State Finance Commission (2004) along with their 'Action Taken Report', following which a much needed debate on resource transfer to Panchayats can take place across the State involving the PRIs themselves.

14) The Line Departments of the State Government not to function parallel to but in cooperation with the Gram Panchayat:

It has been noticed that various Departments of the State Government along with their respective Directorates are exercising direct control and authority over the people in villages bypassing even the consultation with the Gram Panchayats. As a result, neither the Panchayats are able to administer the subjects entrusted to them under the Constitution and other laws, nor the officers of the concerned Departments and Directorates dealing with such subjects and ever remaining under the dubious shadow of a remote control from atop are able to address to the day-to-day problems arising out from the ground reality with necessary concert and quickness. As is well-known, the 11th Schedule of the Constitution that enlists 29 subjects empowers the Gram Panchayats to administer them. Again, the Section 44 of Orissa Gram Panchayat Act 1965 contains a list of 30 subjects, over which the Gram Panchayat shall exercise its 'obligatory functions'. Besides the Section 45 of the said Act provides for a list of 25 subjects, over which the Gram Panchayat shall exercise its 'discretionary functions' i.e. as and when if a Gram Panchayat desires to exercise such a function. Further Section 49 provides for the control of Gram Panchayat over the management of public streets and waterways, while Sections 50, 51, 52, 53 and 54 cover the duties of a Gram Panchayat in matters relating to private water supply, water supply for public purposes, improvement of sanitation, scavenging and disposal of water hyacinth. As mentioned earlier, the Section 55 empowers the Gram Panchayat with the licensing authority over 24 categories of industries and trades including dangerous and offensive ones. The Sections 58, 59, 60, 62 and 63 vest the control of private markets with Gram Panchayat. Then the Section 64 entrusts the power to dispose of corpses, the Section 65 the power to register births, deaths and marriages, the Section 66 the duty to report infectious diseases and the Section 70 the duty towards pest control and improved husbandry to the Gram Panchayat. Thus the Orissa Gram Panchayat Act 1965 virtually expects a Gram Panchayat to exercise its

authority over all possible aspects of village administration, for which no Line Department of the Centre or State Government or a Directorate working under it need directly and in a parallel manner undertake any activity within the jurisdiction of a Panchayat. Alternatively, the line departments or their directorates, if need be, can work for the people of a village by way of maintaining close coordination with and acting on the advice of the concerned Panchayat body.

Further, the Section 45(u) of Orissa Gram Panchayat Act 1965 authorises a Gram Panchayat to undertake a discretionary function i.e. 'to organize a body of Grama Swechha Sevaks for assisting the Gram Panchayat in the discharge of its functions in the matters of social service'. Since a Gram Panchayat is today found to be involved in multifarious kinds of activities stretching from simple charity to developmental projects, it is barely warranted that there should operate different kinds of Village Committees under the overall aegis of Gram Panchayat, each to focus on a specific kind of welfare activity such as education, health, sanitation, vocational training, self-help, women and child development, forest protection, civil construction, disaster management and the like, and the corresponding line departments of the State or Centre in stead of working in a parallel manner as they do now, should extend their technical expertise, administrative linkage and financial resources to their counterpart committees at GP level. If such a collaborative enterprise by the Gram Panchayat and Government at Centre and State can take shape and operate under the overall aegis of Gram Panchayat, then a lot of duplication of efforts and resources, as is being noticed today, can be avoided and the holistic vision of Gram Swarajya can take a strident step forward in no time.

Under the circumstances, in keeping with the Constitutional mandate of 73rd Amendment, the OGP Act 1965 should further be amended to ensure full control of Gram Panchayat over the very subjects, which the Act has directly or indirectly assigned to the GP, and simultaneously the corresponding laws and bye-laws governing the working of the line departments of the State Government be suitably amended to provide for their role and service as a collaborator vis-à-vis the Panchayat bodies, which may be required as and when the GP itself desires in the interest of an overall, integrated development of the village.

15) Mechanism of Monitoring and Control over a Panchayat body to be re-built into the 3-tier system of PRIs itself:

It has been noticed that quite many representatives of PRIs have been abusing whatever little and partial powers financial and executive have been given to them, causing thereby material and moral detriment to the society as a whole including the people who have elected them to their current position. It has ever remained a vexatious issue dogging everybody since the very inception of the current style of Panchayati Raj in our State. As a matter of fact, any system of governance like Panchayati Raj can function in an efficient and appropriate manner, if an impeccable mechanism of monitoring and control could be built into it. But that is precisely where our current system of Panchayati Raj has gone weirdy and topsy-turvy. We don't have a mechanism of monitoring and control whereby one can fix the accountability for any act of impropriety or misfeasance on any

specific person. What exists in stead is a system of diarchy, in which the elected PRI representatives wield certain de jure powers, while the de facto powers are with the non-elected executives in the administration. There are numerous provisions in the existing Orissa laws governing the PRIs which while apparently giving some powers to the PRIs do daily and hourly bind them by hands and feet to the executives in the administration. For instance, the Sections 109 to 121 occurring under Chapter XI (Control) of Orissa Gram Panchayat Act 1965 not only vest the Collector and his deputies with the power to inspect, supervise and control any act of GP as and when they please, but also authorises the Sub-Collector even to undo the Resolution of a Gram Panchayat, and empowers the Collector to suspend a Sarpanch, and even to dissolve and supersede a Gram Panchayat. Under such circumstances, the Panchayat functionaries in stead of remaining directly accountable before the people who elect them, are compelled to remain obedient to the executives in the administration at district, subdivision or block levels, who in turn remain answerable to their political and executive bosses in the Government atop, on whom the posting and transfer of these district and sub-district level officers depends. Thus the chain of accountability of the PRI representatives at any level in stead of being downwards in the direction of the people in the villages, remains poised upwards and that too towards the executives in administration at different levels. As a result of such a topsy-turvy structure of accountability that marks the present system of PRIs, everybody's responsibility has turned into nobody's responsibility. As and when a case of corruption surfaces in regard to Panchayat matters, the PRI representative tends to show the concerned executive officer as the fall guy and vice versa. And nothing positive for the Panchayat comes out from out of such filthy exchange of accusations and counter-accusations between the PRI representative and bureaucratic executive.

The moot point therefore arises as to how a mechanism of monitoring and control can be built into the 3-tier PRI system itself, with the executives in the administration being assigned the role of facilitators for the autonomous functioning of PRIs at the respective level. Specifically speaking, the Zilla Parishad can be entrusted with the task of monitoring and control over the Panchayat Samiti, and the latter over the Gram Panchayat. Moreover, since the ultimate control of any elected body should stay with the electors themselves, the provision of right to recall an elected PRI representative at any point of time should find its place in the statutes concerning Panchayati Raj also.

Under the circumstances, in order to ensure transparency and accountability at every level of functioning of the 3-tier PRI system, a radical legislative reform is called for, whereby (a) the administrative executives, being stripped of their current authority to control, should be made to serve as facilitators for the purpose of autonomous functioning of PRI system; (b) the power to monitor and control a lower body of the PRI system should be vested upon its immediately higher body; and (c) the electorate should be vested with the right to recall a PRI representative, and re-elect another person in his/her place as and when a PRI representative loses the confidence of his electorate.

16. For proper implementation of Provisions for Panchayat Extension to Scheduled Areas Act 1996:

Long ten years have elapsed since the PESA Act was introduced with the objective of strengthening Panchayatairaj in 5th Schedule areas of the country. The Government of Orissa also introduced a separate Act for adopting PESA in the selected areas of the State mostly inhabited by tribes and indigenous groups. The PESA Act is essentially meant to enable these vulnerable populations to participate in mainstream developmental processes while maintaining their own socio-cultural identity. But a critical look into the actual state of affairs in areas under PESA presents a dismal scenario about the operation of this unique law. Under the circumstances, the following important principles need to be complied with for a proper implementation of PESA Act in Orissa.

a) Ownership of Minor Forest Produce:

The Section 4 (m) of PESA Act 1996 entrusts the ownership of minor forest produce with Gram Sabha and Gram Panchayat. But in ground reality, such ownership exists only on paper. The real control over collection, processing and marketing of minor forest produce still remains with the Forest Department, with whose permission the traders coming from outside have established their firm grip over the marketing of minor forest produce. *So immediate steps should be taken to hand over the ownership and complete control of minor forest produce to Gram Panchayat in areas under PESA Act.*

b) Consultation with Gram Sabha in matters concerning land acquisition and resettlement and rehabilitation: As per the Section 4(j) of PESA Act, prior consultation with Gram Sabha before acquisition of land and before finalization of R and R Policy is obligatory. But it is being noticed that the Government is indiscriminately acquiring land in scheduled areas without undertaking proper consultation with the Gram Sabha. And the Gram Sabha is also not consulted in respect of the R and R package, the result being rising discontent all over among the tribals and dalits against the Government's ill-thought policy of industrialization. *Under the circumstances, the Government should ensure that no land should be acquired or no so-called resettlement and rehabilitation package be implemented without the full-scale consent of the concerned Gram Sabhas in 5th schedule areas.*

c) Prior Approval of Gram Sabha necessary for mining projects: As per Section 4(k and l) of PESA Act, the prior approval of Gram Sabha is mandatory in respect of license for prospecting, extraction or processing of minor minerals. But it has been found that such mining activities are being undertaken in scheduled areas bypassing the approval from Gram Sabha. As a result, the discontentment among the tribals and indigenous groups is growing day by day. *Under the circumstances, the State Government must ensure that no mining activity whatsoever is conducted in the scheduled areas without obtaining full-scale consent of the local inhabitants.*

d) Extension of principles of 6th Schedule areas to 5th Schedule areas: As per Section 4(O), the State legislature should take steps to ensure that the kind of administrative autonomy prevailing in 6th schedule areas upto the district level should be gradually extended to the 5th schedule areas. From the point of self-governance, the pattern followed in the 6th schedule areas is definitely richer than that which is allowed under PESA Act for 5th schedule areas. But ironically enough, the Government of Orissa,

by their actual practice at ground level is not honouring at all whatever minimum features of autonomy guaranteed under PESA Act for 5th schedule areas. *Under the circumstances, the Government of Orissa should first of all implement all the provisions of PESA Act in the 5th schedule areas and simultaneously invite a popular debate among the concerned sections of population as regards the feasibility and modus operandi of the application of 6th schedule principles to 5th schedule areas.*

e) Control of Gram Sabha over organizations and functionaries: As per Section 4(m-6) of PESA Act, the State legislature should endow the Panchayats in 5th schedule areas with control over all agencies and their functionaries operating in social sector. But what is being observed presently is contrary to this contemplation. The Gram Sabha or Gram Panchayat has been made to function in a subservient manner before all administrative offices, and is showing complete dependence upon them for any damn thing required by the villagers. The villagers in stead of exercising any control over the administrative personnel have become their virtual servants. Such an unhappy phenomenon runs counter to the letter and spirit of PESA Act. *Under the circumstances, in order to realize the vision underlying the PESA Act, necessary legal and administrative reforms should be undertaken so that all the agencies in social sector, Governmental or non-Governmental operating in the scheduled areas along with their personnel are brought under the real control of the Panchayat at the respective level.*

17. For Proper Implementation of NREGA 2005 in Orissa:

The National Rural Employment Guarantee Act 2005 has been in operation in selected States of the country including Orissa with effect from 2nd February 2006. But the ground reality tells that the concerned people in Orissa have not by and large availed its benefits till date. So in order to ensure a proper implementation of NREGA in our State, the following principles, as warranted by the Act itself, should be complied with by way of providing appropriate kind of Scheme and Rules by the State Government. Specifically speaking, the State Scheme and Rules under the Act should incorporate the following principles.

a) Administration to act as facilitator for the Panchayat: As per Section 13 of the NREG Act, the Gram Panchayat, Panchayat Samiti and Zilla Parishad are the principal authorities for the implementation of the Act. *So the corresponding Government agencies starting from Block Office to District Collector should act as facilitators for the corresponding Panchayat bodies in stead of being their controllers or string-pullers.*

b) The Action Plan made by the GP shouldn't be interfered with by the administration: As per Section 16(1) of NREG Act, Gram Sabha/Palli Sabha is entrusted with the all-important tasks of identification, implementation and supervision of the projects to be undertaken under the Act. *It is therefore necessary that the Action Plan of Projects as prepared by the Gram Sabha/Palli Sabha shouldn't be tinkered with in a substantial way.*

c) Gram Sabha/Palli Sabha to supervise the execution of every project: As per Section 16(5), at least 50% of all works under the Act must be directly implemented by Gram Sabha/Palli Sabha. Thus the remaining 50% may be entrusted to NGOs, SHGs, Cooperatives and line departments of the Govt etc. However, since the PRIs have been made the principal authorities under the Act [vide Section 16(1)], they have a right and as well a duty to supervise the execution of each work and to ensure that the proclaimed goal of providing employment or unemployment allowance to each intending job-seeker is fulfilled. *The Orissa Scheme should accordingly entrust the power of supervision to the Gram Sabha/Palli Sabha in the matter of every project work, whether implemented by Panchayat or not.*

d) Right to Information about NREGA progress and accounts: The information on implementation and accounts of NREGA comes under the category of suo motu disclosures by public authorities as required under Section 4 of the RTI Act 2005. The Section 4(4) of RTI Act says that suo motu informations should be made available either free or at print or medium price, which may be prescribed by the appropriated Government. Moreover, Point 16 of Schedule I of NREG Act says that all accounts and records relating to the Scheme shall be made available for public scrutiny, and only when a person desires to take a copy, he/she may have to pay the prescribed fee. *It is therefore required that the State Scheme under NREG Act should provide for free inspection of all documents including accounts, and may prescribe just the copy charges of the documents required by a person at the prevailing market rate.*

e) Prompt payment of unemployment allowance and other compensations: As per Section 7 of NREG Act, if a registered worker is not given wage-work within 15days of the date of his application for work, he or she entitled an unemployment allowance. Again, as per Point 30 of Schedule II of NREG Act, if a worker is not paid the wages within the given time-period, then he or she shall be entitled to compensation as per the Payment of Wages Act 1936. Besides there are other types of compensation that a wage-worker is entitled to under the Act. *In order to ensure that no worker is harassed in the matter of getting his wages and compensations, strict norms of regularity in making all kinds of payments be laid down for compliance by the concerned executives.*

f) Time-bound Disposal of Grievances and Appeals: As per Section 23 of the NREG Act, every complaint made before the Programme Officer (BDO) regarding infringement of any provision of this Act, shall be disposed of within 7 days. Moreover, since there is no independent appellate mechanism to hear the complaints made against BDO or District Collector as the case may be, the Orissa Scheme may provide for the same with a view to ensure a truly corruption-free operationalisation of the Act. *Under the circumstances, the Orissa Scheme should provide for obligatory disposal of every complaint within 7 days of its submission, along with an independent appellate body, one each at Block and district level, which may consist of PRI leaders and conscious citizens known for their honesty and propriety.*