

## **Memorandum on Empowerment of PRIs to enable them to play an effective role in disaster management and related fields** *(CASA Memorandum adopted at Kanas, Puri on 27 April 2006)*

Needless to say, it is the people themselves living in the villages that do bear the brunt of any disaster as and when it strikes them. And it is equally true that the Panchayatiraj institutions, which represent these people in villages, the first respondents to any disaster, and which are so to say the epitome of democracy at grassroots, can effectively and timely manage any disaster right from the phase of response to that of rehabilitation, if only endowed with adequate authority, autonomy and resources in respect of their functioning vis-à-vis the upper two tiers of governance as at State and Centre. Again, between Gram Panchayat, Panchayat Samiti and Zilla Parishad, it is the Gram Panchayat which deserves to be empowered at the first instance, since it is not only the bottom-most layer of governance in the country's overall polity, but also fully constituted of directly elected representatives of the people in a village. It is perhaps with this perspective that the 73<sup>rd</sup> Amendment of the Constitution effected in 1992 provided for endowing 'the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level' in respect of planning for 'economic development and social justice' and implementation of schemes made there-under. A new list called Eleventh Schedule was in fact added to the Constitution, which mentioned 29 subjects, over which the Panchayat was envisaged to have ultimate control.

However strange it may seem, long before the 73<sup>rd</sup> Constitution Amendment of 1992 was effected, the Orissa Gram Panchayat Act, 1965 which grants much more powers and authority to the Gram Panchayat had come into force. And it is still in force albeit some amendments thereto here and there over the years including the one made in compliance to the requirements of 73<sup>rd</sup> amendment of 1994. Though there are some provisions and provisos in this Act which dilute the envisaged status of an empowered Gram Panchayat, the Orissa Gram Panchayat Act 1965 is still on the whole a wholesome legislation, which broadly conforms to the vision of Panchayatiraj Institutions as units of self-government as conceived under Article 40 (Directive Principle) of the Constitution. With necessary amendment, if made at appropriate places so as to remove its ambiguities, inconsistencies and contradictions, the Orissa Gram Panchayat Act 1965 can well serve as a powerful and viable guidepost for ensuring proper governance of the lowest but most crucial layer of our political system i.e. Gram Panchayat. And it goes without saying that, the Gram Panchayat, once properly empowered in terms of funds, functions and functionaries, shall prove capable enough to administer effectively and democratically almost all the affairs of the village, be it disaster management, gender justice or even land rights of the landless poor.

However the ground reality is such that the Government of Orissa in stead of moving in the direction of empowering the Gram Panchayat with further autonomy as envisaged under the Directive Principles of State Policy or 73<sup>rd</sup> Amendment of the Constitution, is seen to be stubbornly reticent to give effect to quite many existing provisions of the Orissa Gram Panchayat Act 1965, which, if operationalised, would strengthen the overall status of the PRIs and enable them to discharge their obligations towards the people in their respective jurisdictions in a more effective and just manner. And moreover, necessary legislative reform followed by suitable administrative arrangements are called for in order to enable the Panchayats to emerge as authentic, holistic bodies of people at grassroots and concurrently to perform an effective role in newer domains such as disaster management, gender equality and resource-endowment of the landless poor.

*Keeping the above perspective in view, it is suggested that the Government of Orissa should do all that is possible on their part*

*- firstly, to give effect to those very wholesome provisions of the Orissa Gram Panchayat Act 1965 (mentioned hereunder), which due to their long disuse have remained for all practical purposes defunct and sterile; and*

*- secondly, to introduce necessary legislative reform to be followed by corresponding administrative measures with a view to enable the PRIs, as units of self-governance, to cope with the new challenges, especially in the fields of disaster management, gender equity and social justice.*

## **PROVISIONS OF ORISSA G.P.ACT 1965 TO BE IMPLEMENTED**

a) **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) **The Section 45 (Discretionary Functions)** 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 Section 55 (Industries and Factories including dangerous and offensive trades).** Its sub-section (1) 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, naphtha 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 8<sup>th</sup> 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.

## **LEGISLATIVE REFORM AND ADMINISTRATIVE MEASURES NEEDED**

1) **Power to requisition equipments during emergencies:** At present neither the archaic Orissa Relief Code 1980 nor the Gram Panchayat Act 1965 nor even the recent Orissa State Disaster Management Policy 2005 gives any power to the Gram Panchayat to requisition from the Government or from any other quarter the emergency equipments and accessories like boats and automobile etc., which are barely necessary to cope with the unavoidable challenges in the context of the response phase of a disaster. So necessary legislative and administrative reforms should be introduced to remove this handicap of the PRI system.

2) **Power to monitor and prevent involuntary migration of workers from the village:** Needless to say, the rising trend of involuntary migration of the poor, jobless villagers to far-off places in search of job and livelihood can be checkmated only by an act of close and regular monitoring coupled with suitable preventive measures by the Gram Panchayat and other PRIs. But as of now such power of monitoring and prevention of involuntary migration vests for all practical purposes not with the GP, but with the Labour Department of the State, which has but failed squarely, for obvious reasons, to exercise it as expected. In contrast, as per Section 44 (z) of the Orissa GP Act 1965 the GP is entrusted with the obligatory function of executing all 'poverty alleviation programmes' within its jurisdiction, and as per its Section 45(m), the GP has the

discretionary function of ensuring 'establishment and maintenance of works for providing employment in time of scarcity and establishment of granaries', which if exercised in reality by the GP would go a long way in checking the involuntary migration of the villagers. Again, the recently enforced National Rural Employment Guarantee Act 2005 in its Schedule-2 (2) vests the power to register all the families seeking unskilled job under the Act on the Gram Panchayat, thus conceding to the home truth that it is only the GP which can arrest the involuntary migration of the villagers by way of providing the jobs to them. Thus the GP along with the other two upper layers of PRI system should be entrusted with the power to monitor the involuntary migration of the villagers for job and livelihood to far-off places, and prepare suitable work-plans for preventing the same, as warranted under both Orissa GP Act 1965 and NREG Act 2005.

**3) Emergency Shelter Building to be managed by the GP:** 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, if need be, as a venue of school, health centre, Gram Sabha or other such community needs in normal times. Such a suggested provision in full correspondence with the Eleventh Schedule of the Constitution vide Point 29 and the Section 44(z-4) of the OGP Act 1965, that provide for the 'maintenance of community assets' by the GP.

**4) Women Task Force to be formed at GP level:** Each should have a Women Task Force, whose duty shall be to ensure appropriate relief and rehabilitation services for the women and children affected in a disaster besides managing such problematic issues as trafficking of women and children, maintenance of women and children in distress, working of Anganwadi and SHGs, control of trade in drugs and alcohol and midday meals for the school children in normal times. In fact the Section 44(z-1) of OGP Act 1965 and Eleventh of the Constitution vide Point 25, which provide for 'women and child welfare' to be the job of a GP do fully bear out the justification in favour of the above proposed measure.

**5) 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'.

**6) GP in stead of Block to form the unit for the disaster mangement:** Under the current practice as sanctioned under the Section 18 of Orissa Relief Code 1980, the Block is taken as unit of Relief Organisation, and consequently even if the whole of a GP is affected by a disaster, it is not declared so and is thus derived of any assistance from the Government in terms of relief and rehabilitation purposes. Under the circumstances, the Orissa Disaster Management Policy 2005, which otherwise requires a comprehensive revision in the interest of empowering the PRI system, should inter alia provide for a GP to be considered as an administrative unit for the purpose disaster management.

**7) Raising of Quorum and women's participation in Gram Sabha and Palli Sabha:** As per Section 5 (2a) of OGP act 1965, the quorum for the meetings of Gram Sabha is only one-tenth of the total membership of Gram Sasan, and strangely enough, the said Act hasn't provided for any quorum at all for the meetings of Palli Sabha [vide Section 6(5)]. What happens as a result is a notorious affair, i.e. only a few heads having vested interests get together and their decisions

whatever pass off as the resolutions of Gram Sabha or Palli Sabha, as the case may be, defeating thereby the very quintessential philosophy of Gram Sabha itself.

Secondly, as per the Section 4(1) of OGP Act 1965, every adult, whether a man or a woman, who is a voter as per the Representation of the People Act, 1950 is a member of the Gram Sasan and is thereby eligible to attend the meetings of Gram Sabha or Palli Sabha, as the case may be. While prescribing the quorum of the meetings of these bodies, the Act hasn't made any provision for women's participation. As is well-known, in a patriarchal society like ours, except in a few cases, the women by and large remain absent from such meetings and it is only the attending male folk who take all the decisions for the village, including the ones that directly and critically affect the interests of the women. Thus the current provisions under the OGP 1965 do work towards the perpetuation of the gender discrimination in the decision-making process in Gram Sabhas and Palli Sabhas, which are supposed to be the rock-bottom foundation of our polity, thanks to their practice of direct democracy.

It is therefore urgently required that the OGP Act 1965 should be amended at appropriate places so as to ensure that (a) the quorum for the meetings of either Palli Sabha or Gram Sabha should be raised to 50% of the total membership of the respective body, and (b) the quorum for the women participants should be 50% of the total number of members participating in a meeting of Palli Sabha or Gram Sabha, as the case may be.

**8) No bureaucratic control over the GP:** Since the Article 40 and 243G of the Constitution envisage the PRIs, especially the Gram Panchayat to emerge as units of self-government, certain provisions as mentioned under OGP Act 1965 which run diametrically counter to the letter and spirit of this constitutional vision deserve to be scrapped at once. The Section 109 of the 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 in fact nullify 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. As a result, the Panchayats don't evince any genuine interest to prepare any plan for themselves, be it for disaster management, employment guarantee, gender justice or mainstreaming the landless and marginalised. Under the circumstances, the OGP Act 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 is, as aptly envisaged under the Constitution, supposed to act as a self-governing unit of the country's overall polity.

**9) Election to PRIs to be held on non-Party lines:** A Panchayat, as conceived under the Constitution to be an all-inclusive, self-governing body for the members of a village, should remain free from the undesirable influence of partisan politics, and therefore the Panchayat elections at any of the 3 levels, namely GP, PS and ZP shouldn't be conducted on party lines. To ensure a non-partisan character to the election to the PRIs in Orissa, the concerned election rules of Orissa Zilla Parishad Act 1991, Orissa Panchayat Samiti Act 1959 and that of Orissa Gram Panchayat Act 1965 should be so amended as to disqualify a person to contest the election to any of such bodies using Party tickets or Party symbols.