

**Memorandum for streamlining and strengthening of Panchayati Raj
Institutions to enable them to function as units of self-government
at grassroots level in the State of Orissa
(CASA Memorandum adopted at Kendrapara on 15 May 2006)**

About one and half decades is going to elapse since the historic 73rd Constitution Amendment of 1992 was passed with the prime objective of enabling the Panchayati Raj Institutions to act as units of self-government at the lowest rung of country's overall system of governance. But the dismal state of affairs that characterizes the functioning of PRIs in the State of Orissa today is too sad a commentary on the said constitutional mandate. Not only the elected representatives of PRIs continue to behave as handmaid to the bureaucracy as ever before, but also they are found, to everybody's disgust, getting involved in internecine conflicts around petty matters of power and pelf, with the common people remaining aloof and away from them. In absence of a proper functioning of PRIs, the massive flow of money from the Centre and various international aid agencies in the name of different schemes of rural development gets mostly disarrayed from the proclaimed objects, with its major chunk being amassed by the bureaucratic overlords and the remaining scraps pocketed by the cunning leaders of PRIs themselves. Whatever mechanism prescribed in the Statutes for the functioning of PRIs, though faulty and deficient itself, is being complied with on pen and paper only, and that too through forgery and manipulations, with the people remaining mute spectators. Such an abominable situation that surrounds the PRIs today calls for a radical rethinking on the part of all those individuals and agencies within or outside the Government, who despite the dark clouds all over, do sincerely wish to see that the grassroots democracy of our country is put into the place that it deserves.

With the above perspective in view, we like to put forward hereunder some salient propositions, which aim at streamlining and strengthening the system of PRIs, especially its bottom-most and critical layer i.e. the Gram Panchayat.

1) 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.

2) **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 a sizable quorum for the attendance in each meeting of Palli Sabha i.e. at least 50% of its total membership.

3) **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.

4) 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.

5) The Resource base of a Gram Panchayat to be vastly widened by way of implementing Section 55 of OGP Act 1965: One of the chief reasons, adduced quite often and justifiably too, for the lacklustre performance of the PRIs is their perpetual shortage of resources and consequent dependence on the Government above for doing any damn thing in their respective locality. But on a close scrutiny, it is found that such a resource-starved state of the Panchayats has been caused precisely due to the non-implementation of Section 55 of the OGP Act 1965. 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 area 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 item, numbered as (v) under sub-section (1) i.e. 'manufacturing of anything from which offensive or unwholesome smell arises'. 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 that may be charged by a Gram Panchayat against the various items, and the said Chart had provided inter alia for license fee for manufacturing of arrack (distillery), covered under the above item (v). 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". Thus it is a plain truth that if the Gram Panchayat be really entrusted with the power to license the various industries and trades for operating within its jurisdiction, then not only a lot of social and environmental problems arising from the license granted from above shall come to an end in due course, but also the Gram Panchayat can widen its resource base to a great extent by way of collecting fees against the issue and renewal of such licenses.

Under the circumstances, the Section 55 of Orissa Gram Panchayat Act 1965 providing for GP's power to license the income-generating industries and trades be implemented fully and the concerned line departments of the Govt who have illegitimately usurped such original jurisdiction of Gram Panchayat should surrender it back to the GP in no time.

6) 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 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 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.

7) 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 Maharastra 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 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.

8) Panchayat Police and Adalti Panchayat: With a view to ensure proper law and order within the jurisdiction of Panchayat and quick and judicious disposal of all disputes arising within it, a Gram Panchayat should be provided with the twin arms of Panchayat Police and Adalti Panchayat as envisioned under Orissa Gram Panchayat Act 1948 followed by Orissa Gram Panchayat Act 1965. As a matter of fact, 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 Schedules 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 a 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.

Under the circumstances, the State Government of Orissa to enable the Gram Panchayat to act as a genuine unit of self-government as directed under the Articles 40 and 243G of the Constitution should give effect to Sections 153 and 154 of the existing Orissa Gram Panchayat Act 1965 that provide for Panchayat Police and Adalti Panchayat to start functioning under the overall aegis of Gram Panchayat.

9) 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 Swachha 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.

10) 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.