

Devolution of Power to Panchayat: A Critical Study of Legal Provisions, Subject Laws and Case Laws relating to Panchayat in Orissa.

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A. Context:

The Constitution of India, in its original form provided for a two tier federal system of Government consisting of Union at the central level and States in the provincial level. 42-Years later, since Indian Constitution came into force in 26th January 1950, a significant change had occurred in the framework of governance of the country by virtue of 73rd and 74th Constitutional Amendment. Through this Amendment in 1992, the Indian Constitution in Article 243 mandated configuration of Panchayats¹ and Municipalities² in every state of India. The constitution also intended that the legislature of the states, by law, endow the Panchayats and Municipalities with such power and authority as may be necessary to enable them to function as Institutions of self government. The constitution also in its magnanimity laid down basic principles for its composition so also carved out a descriptive formula for its establishment. This constitutional stipulation witnessed a transition from centralisation to decentralisation of governance in India, which has so far been conspicuously absent in Indian federalism.

1 Article 243 to 243-O of Part IX.

2 Article 243-P to 243-ZG of Part IX-A.



In the discourse of decentralisation, the Indian Constitution in its outward appearance envisages³ devolution of powers and responsibilities upon Panchayats at the appropriate level with a determined purpose of preparation of plan as well as implementation of schemes to accomplish economic development and social justice as a constitutional goal. A key feature of the 73rd Amendment of the Constitution was empowerment of Panchayat by way of devolution of power and responsibilities. It has a direct bearing on making Panchayat an institution of self government and therefore, a contributory provision to enable Panchayat to function as an institution of self-government. For the purpose of devolution of power and responsibilities a suggestive framework of matters for devolution has been identified by the constitution itself. While the framework of matters can be widened by the state legislature, it cannot be abridged as the constitution further mandates that such devolution of power and responsibility includes the matters listed in the 11th Schedule⁴. The 11th Schedule contains 29 matters.

3 Article 243- G relating to Powers, Authority and Responsibilities of Panchayat.

4 Added by the Constitution (Seventy-third Amendment) Act 1992, Section 4 (w.e.f 24.04.1993).



The legislative response of States of India to the constitutional mandate for purposes of devolution of power and responsibilities upon Panchayat finds expression in the form of incorporation of functions either through amendment of the then existing law like Orissa. The legislature of State of Orissa effectuated the constitutional mandate by way of incorporating the entire constitutional provision in the Orissa Grama Panchayat Act⁵. This provision thereby becomes a part of obligatory functions of Orissa Grama Panchayat Act. This seemingly important aspect of course is not absolute as at a more abstract level it is dependent on the availability of funds of panchayats⁶.

Johnson observes *“The scholarly literature on Panchayati Raj tends to move in two fairly incongruous directions. One, which is firmly grounded in the liberal democratic paradigm, argues that the 73rd Amendment did indeed create the conditions for decentralisation in India, and that this was a positive development. Although there is some disagreement about whether and to what extent the reforms have been implemented, the general consensus within this school is that*

5 Incorporated in subsection 3of section 44 of Orissa Grama Panchayat Act 1964 vide notification no. 2578, dtd. 28.2.2004 O.G.E. No. 322 dtd. 3.3.2004.

6 Subsection 3 of section 44 provides that it shall be the duty of Grama Panchayat to prepare plans and implement schemes for economic development and social justice within the limits of funds of panchayat.



the 73rd Amendment was a positive step for Indian decentralisation and that the only factor preventing successful devolution is the failure to implement fully the terms and conditions of the 73rd Amendment. A second school is decidedly more critical of decentralisation in general and the 73rd Amendment in particular. A central assertion that underlies this second school is that the reforms put in place in 1993 are largely cosmetic, and that the ultimate distribution of power and resources in rural areas is dependent on the pre-existing pattern of social inequalities created by caste, religion, class, gender and other forms of rural domination. This second body of thought we will address in due course. For the time being however, we consider the extent to which the changes put in place by the 73rd Amendment can be understood as decentralisation”.

Even though at an abstract level the devolution of powers and responsibilities as envisaged by the constitution for Panchayat has derived authority from the Constitutional provision, in practice the legislative measures encounter challenges when the matters come across subject laws. The matters listed out in the 11th Schedule have so far been regulated by laws on the subject of which some are enacted by state legislature and some by union parliament. There is a definite constitutional plan of overriding effect in cases of collusion between laws. Since independence the union and state have made various



legislations delineating therein structure, functions and processes to be followed to give effect to subjects regulated under those matters. Hence, there cannot be one shot remedy by merely putting all matters in the law relating to panchayat.

The incorporation of 29 matters as listed in 11th schedule of the Constitution in the laws relating to Panchayat at the state level, however, does not signify much legislative authority as it is difficult to draw authority or connect the provisions of Panchayat laws to various laws to derive sanction to undertake activities for preparation of plans or for the purpose of implementation of schemes. Invariably each of the subjects listed in 11th schedule is governed under a variety of statutes enacted by the state legislature or by the parliament. As per the division of legislative power in India between union and state government each one has an identified sphere to make laws. In case of panchayat, as it is a state subject the legislature of the state has complete jurisdiction over the subject for enactment, amendment or for repealing the Act. Accordingly, it was possible for state legislatures to incorporate the listed matters in the 11th schedule in the laws of Panchayat of their respective states but beyond this preliminary statutory provision no further statutory changes could have been made possible. The fundamental principle governing the process of law making is that the sovereign authority to make laws is restricted to the spheres identified under union, state and concurrent list. As far



as the subjects identified for the purpose of devolution of power to Panchayat are in conformity with the state subject the legislature of the state can exercise its authority to enact or amend the law but when such subject comes under the jurisdiction of union list the state cannot make law. Further wherever the centre has already legislated no changes are possible as the effect of statutes enacted by state legislature cannot have overriding effect on it. Therefore, when the constitution envisages that the state legislature by law devolves power and responsibility ordinarily it is restricted to the sphere of subjects over which the state legislature has the authority to make an enactment.

B. Proposition:

The formula concerning Decentralisation of administration beyond Union and State Governments through Panchayat has a comparatively recent origin in the constitution hence its institutionalisation in a country, which traversed little more than four decade long centralised administration, is a formidable task. As the country until 1993, has so far been governed by Union Government at the Union level and State Government at the provincial level, there is bound to be laws to regulate various matters identified in the 11th schedule of the constitution which itself owes its origin in 73rd Amendment. When these matters are regulated under different subject laws, it is impossible to ensure devolution of power without making

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attempt to bring about changes in the existing laws regulating the subject matters. The prospect of devolution of power is contingent upon reform in the legal and institutional mechanisms which are already in place. Jayal observes that the failures can be attributed to an absence of the required reform in law, or of a clear reworking of the relationship between local elected institutions and administrative structures. She suggests that the picture is complex and requires an understanding of the interpenetration of old and new institutions; of the changing rules of engagement between citizen and state; of politics and society on the one hand, and law and administrative structures on the other. This idea tends to focus on a need for review of subject laws which transgresses into the functional domain of Panchayat accorded by 73rd Constitutional Amendment. This research therefore builds and expands into existing subject laws enacted by both State and Central Government which are applicable in Orissa State to ascertain the implications of various subject laws on the functional domain of Panchayat.

A study pertaining to Panchayati Raj Jurisprudence asserts that Article 243N of the Constitution deals with the continuance of existing laws and panchayats. The Articles states that “any provision of any law relating to panchayats in force in a State, immediately before the commencement of the Constitution 73rd

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Amendment Act 1992, which is inconsistent with the provisions of this part shall continue to be enforced until amended or repealed by a competent authority or other competent agencies or until the expiration of one year from such commencement". On interpretation of this Article is that compatibility or inconsistency with the 73rd Amendment applies to only those laws which relate to the Panchayates 'per se' in other words composition, structure, financial powers etc. For instance previously existing laws in a state dealing with village administration, Panchayat Unions, District Development Boards etc may fall within the purview. Another view however is that the purpose of Article 243N is much wider and covers all the existing laws which impinge on the functional domain of the panchayats. For example, an Agricultural Produce Marketing Act or an Inland Fisheries Act may not contain any reference to Panchayats or Municipalities but if the subject matter of these Acts fall within the 11th Scheduled of the Constitution, prima facie they pertain to the functional domain of the panchayats. In that sense, the Marketing Act or Fisheries Act may exclude or limit the Panchayat domain. They should then be regarded as inconsistent within the meaning of Article 243N and therefore become liable for an amendment or repeal⁷.

⁷ Review of State Subject Laws and Some Central Laws – A Note of Preliminary Findings, Panchayati Raj Jurisprudence Study for Ministry of Panchayati Raj, Institute of Social Sciences, 2005.



In India, normally planning and development are not governed by statutes. They are mostly in the realm of executive decision making. However, there are some Acts which have developmental implications. Such Acts which are directly related to the functions earmarked for the local governments under the Constitution as well as the State Acts, need to be amended in order to enable the local governments to function freely and effectively within the domain assigned to them. It is with this objective that Acts relating to Water Supply, Electricity, Education, Land Development etc. are recommended to be amended. Some of the Acts though administered by the local governments date back to a period when local governments were not given the autonomy they are now entitled to, and as such provide for too much of executive control. Such Acts are to be amended to tone down governmental control and increase the autonomy of the local governments. Examples of such Acts are the Cattle Trespass Act, 1961, the Cinemas (Regulation) Act, 1958 and the Places of Public Resort Act, 1963. Based on the 73rd and 74th Amendments to the Indian Constitution, Kerala enacted new Panchayat Raj and Municipality Acts in 1994 and further improved them through fundamental amendments in 1999. The basic objective of these amendments was to realise the constitutional mandate of laying the foundation for genuine “institutions of local self-government”. In order to further this objective, it is necessary to amend certain Acts which are either administered by the local



governments or which have a close bearing on their functioning in the changed context. In order to strengthen the legal identity of local governments they have to be given a position in several legislations. This will further consolidate the process of decentralisation which is being actively pursued by the State and promote convergence of action⁸.

State statutes enacted in conformity with the provisions of the Constitutional Amendment Act have not significantly altered the functional domain of Panchayat bodies particularly the Grama Panchayats. In states where either the intermediate or apex tier of PR or both was absent prior to the constitutional amendment, state governments have not exhibited any concern to endow the new institutions with adequate functional responsibilities in development sectors. States where these tiers are already in existence have merely repeated the amendment provisions in their existing statutes with little or marginal adjustments/amendments.

Thus the demand by governments mostly at the state level that devolution of power and responsibilities has been ensured to the institution of Panchayat and as a result their consequential empowerment is merely a rhetoric and not in conformity with

⁸ Towards Institutionalising Local Self-government - Concomitant Amendments to Acts related to Local Government Functioning, Committee on Decentralisation of Powers, October, 1999.



the constitutional mandate, therefore the attempt to make Panchayat an institution of self-government is still unaccomplished. As the real devolution has yet to occur therefore the aims of this provision had not been accomplished.

In this context there is a need for an enquiry into the existing legislations pertaining to matters listed out in the 11th schedule to understand the nature and extent of regulation and how the subjects are governed in the present context. The enquiry proceeded with the understanding that the union and state legislature have enacted laws on the matters listed in 11th schedule in accordance with the constitutional provision of division of legislative power between union and state legislatures. Therefore, the present engagement into the laws to explore the legislative status encompasses into both union and state laws already in place under the authority given to the respective legislatures under union, state, concurrent and residuary powers.

C. Subject Laws:

The Panchayats in India have had a dynamic, down to earth and people oriented recognition by the Constitution. The constitution through 73rd Amendment not only spreads out establishment of three tier system of Panchayati institutions but goes beyond the institutional canvas into devolution of power and responsibilities. A wide spectrum of functional domain has



been brought to fore to secure economic development and social justice. The constitution envisages that devolution of power and responsibilities upon Panchayat should be made by enactment of legislations by the state legislature with respect to preparation of plan and implementation of schemes for economic development and social justice as may be entrusted to Panchayats at the appropriate level including matters listed in the Eleventh Schedule of the Constitution. The Eleventh Schedule consists of twenty-nine matters. The Panchayats are supposed to prepare plan and implements schemes on these matters. However, it is necessitous to know the existing legislative arrangements as such legislation definitely mould the process of governance of Panchayat. The poignant pertinence of these subject laws is required to be understood to explore the homogeneity about the triune facets.

An attempt has been made under the research to identify the complex phenomenon of interaction between the constitutional provision relating to devolution of power and responsibility upon Panchayat and its integration into the Panchayat law at the State level in one hand and the subject laws on each of the matter both at central and state level. As it is understood beyond any reasonable doubt there are vast array of laws enacted on the matters by the union parliament and state legislature, therefore, an investigation into these laws have been made to locate those legislations which have substantial



bearing in relation to Panchayats for purposes of preparation of plan and implementation of schemes.

A preliminary investigation of subject laws of central and state reveals that out of twenty-nine subjects at least 8 matters are not regulated through legislation but the governance institutions address these subjects through various schemes or policy measures. These are not matters concerned with any union or state legislation. These matters are Agricultural Extension (Sl. No. 1), Social Forestry and Farm Forestry (Sl. No. 6), Drinking Water (Sl. No. 11), Non-conventional Energy Sources (Sl. No. 15), Poverty Alleviation Programme (Sl. No. 16), Technical Training and Vocational Education (Sl. No. 18), Adult and Non-Formal Education (Sl. No. 19), Cultural Activities (Sl. No. 21), Health, Sanitation, including Hospitals, Primary Health Centres and Dispensaries (Sl. No. 23), Family Welfare (Sl. No. 24), Women and Child Development (Sl. No. 25), Social Welfare (Sl. No. 26), Welfare of the Weaker Sections (Sl. No. 27) and Maintenance of Community Assets (Sl. No. 29). These matters are not covered under the analysis as a preliminary review of legislations suggests that no legislative arrangements are made on the themes. Therefore, this review begins with those matters where it is regulated by central and state legislations which would come in conflict with the constitutional and legal provision relating to Panchayat. Consequentially the above mentioned matters shall be discussed to provide an



understanding how these matters are governed through state policies.

1. Agriculture and Agricultural Extension:

Agriculture is a state subject in accordance with the provision of 7th schedule of the constitution⁹. The term 'Agriculture' is a broad term, which is understood in a variety of ways. The primary sense in which the term agriculture is understood is *agar* - field and *cultura* - cultivation, *i.e.*, the cultivation of the field, and if the term is understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. The term agriculture has been defined in law in various ways. In case of Orissa Land Reforms Act 1960 the term agriculture has been defined as agriculture includes the raising of crops, grass or garden produce, horticulture, dairy farming, breeding and keeping of livestock and use of land as pasture or for forest or for any other purpose where such use is ancillary to agriculture. Agriculture is of wider import than the term cultivation¹⁰. Agriculture means the science or art of cultivating

9 Item 14 of List II – State List, 7th Schedule under Article 246 of Indian Constitution authorises state legislature to legislate on Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

10 Jagannath Nanda vs. Bishnu Dalei 40(1974) CLT 888(900).



the soil including the allied pursuit of gathering the crops and rearing livestock, tillage, husbandry and farming¹¹.

There are a wide range of laws available on various subjects relating to agriculture. In Orissa the state legislature has enacted numerous laws to regulate and govern the subject of agriculture. Some of the major statutes pertaining to agriculture are (1) Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1975 and Rules 1976, (2) Agricultural Produce Markets Act, 1956 and Rules, 1958, (3) Agriculturist' Loans (Orissa Amendment) Act, 1937, (4) Agricultural Year Act, 1963, (5) Agricultural Land (Utilisation) Act, 1969, (6) Chapter XII of the Orissa Relief Code concerning agricultural measures and provision of credit.

The above-mentioned laws can be further reviewed to have an understanding about its impact on preparation of plan and implementation of schemes by the Panchayat for economic development and social justice. It is worth mentioning that there are plethora of legislations available to govern matters relating to agriculture which are however not directly unfold any activity concerning agriculture rather these are available for various purposes especially to lay down condition of service of

11 17 Cal. L.J. 411.



personnel engaged in agricultural services¹² or to manage various establishments¹³. Those laws are taken into considerations which are identified after a careful review which have direct bearing for the purpose of research on agricultural law as a subject law in relation to panchayat. Similarly, Agriculturist Loans (Orissa Amendment) Act has not been separately discussed rather integrated in the review of Orissa Relief Code as this law by and large aims at addressing people affected by natural calamity or reduced to destitution. Even though there is a law which prescribes a uniform Agricultural Year for the State of Orissa which has been referred as Orissa Agricultural Year Act 1963, it has not separately reviewed as it is not useful for purpose of this research. Only a mention of this law is made to bear in mind that Agricultural Year is governed by a statute in Orissa to have a broader understanding of laws relating to agriculture. Further in the process of review of laws, various statutes such as Cattle Trespass Act has been discussed as these are linked to agriculture in various ways.

¹² Like Agricultural Engineering Service (Recruitment and Conditions of Service) Rules, 1974.

¹³ For example Agricultural Produce (Development and Warehousing) Corporation Rules, 1959.



The Orissa Agricultural Credit Operations and Miscellaneous Provision (Banks) Act, 1975 is an Act to make provisions to facilitate adequate flow of credit for agricultural production and development through Banks and other institutional credit agencies. One of the main objectives of legislation relating to social control of Banks is to ensure that adequate proportion of commercial bank credit goes to the agricultural sector. This law was enacted on the premise that the state laws contained provisions, which inhibit the entry of commercial bank into the field of financing of agriculture. Therefore, it was thought necessary to modify such laws for purpose of enabling commercial banks to undertake financing of agriculture on a large scale expeditiously. This proposal bears significance for enabling panchayat to mobilise resources to invest in agriculture. However, the law does not possess any provision for enabling panchayat to secure loans. Even though in this law there are provisions for Cooperative Societies¹⁴ to secure loan it has conspicuously silent over involvement of panchayat.

The Orissa Agricultural Produce Markets Act, 1956 was enacted to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the state of Orissa. This law in its statement of objects and reasons reaffirms that agricultural producer is a victim of the unfair practice and undue exaction of

¹⁴ Section 14 on Power of Cooperative Societies to borrow from Banks in Chapter-V.



a host of middleman on whom the agricultural producer depend for marketing surplus produce. Unless the agricultural producer is assure of his legitimate share of the price paid by the consumer for his produce it will not be possible to bring about any improvement in the standard of living of the cultivators and sustain the progress achieved in expanding agricultural production. In this context this law propose to constitute market committees in selected areas and for selected commodities to be notified by the government. In these areas the market committees shall exercise strict supervision over traders and commission agents who will be licensed by the committees for their operation and also fixed market charges. The law defines agricultural produce as such produce (whether processed or not) of agriculture, forest, animal husbandry, agriculture, horticulture and pisci-culture. In this Act there is a provision for representation of gram panchayat as a member of the market committee {6(b)}. While the opportunity for panchayat is given in the form of representation in the market committee the law also curtails the scope of work of panchayat by making a provision that after declaration of a market area the market committee by requisition may require any gram panchayat to transfer to it any land or building in possession of panchayat wholly or partly situated within the concerned market area which immediately before the establishment of the market was being used by gram panchayat for similar purpose (Section



4(4)). Even though this provision also provides for sharing of net income derive there from.

However, in Talcher Municipality v/s Talcher Regulatory Marketing Committee¹⁵ the Supreme Court held that even if a market is owned and operated by a municipality or a panchayat, if a requisition is made by a Marketing Committee under the Orissa Agricultural Produce Marketing Act 1956, the municipality or the gram panchayat is obliged to transfer the same. It may be noted in this regard that in the examination of the case, the arguments adduced on behalf of the municipality do not appear to have stressed the functional domain of municipality and local bodies subsequent the constitutional amendment. It was also not urged that (a) the Orissa Municipal Act having been amended after the 74th Amendment is the latter Act passed by the Legislature with knowledge of laws already existing (b) that the Municipal Act should, therefore prevail over the earlier Orissa APM Act and that (c) under Article 243N, the provision to take over a municipal market would be repugnant to the Constitution.

Under the above Act the Orissa State Agricultural Marketing Board Regulations, 1991 has been made by the concerned Board under which a provision has been made for creation of State Agricultural Marketing Development Fund. This fund can

15 2004(6) SC 65 decoded 28.7.2004 (FF/SC/4).



be utilised for purposes like imparting education on agricultural marketing, training of agriculturists, traders and members of market committee. Financial aid can be granted to market committees where such committees are weak. As there is a provision for utilisation of fund for any purpose deemed necessary for the execution of functions assigned to the Board {Section 10 (v) (I)}, it can be used to strengthen market committees provided such market committees operate under the control of Panchayat.

In Orissa there is an enactment titled the Orissa Agricultural Land (Utilisation) Act 1969 exists for the purpose utilisation of agricultural lands for cultivation and for the matter ancillary thereof. The law prohibits persons to keep land fallow. It says no person who holds land for personal cultivation whether as a landholder. Raiyat or Tenant shall without sufficient cause keep such land fallow. Here in this context it is necessary to understand the definition of land for this purpose of afore stated Act. In this law land means land used or capable of being used for agricultural purposes. Further the enactment while imposing penalty for keeping land fallow provides that any person who contravention of this provision contains in this Act keeps any land held by him as fallow for two consecutive years shall be liable to pay by way of penalty such sum as may be fixed by the Tahasildar within whose jurisdiction the land is situated. The penalty in no case should exceed Rs 100/-. This law



makes a provision where the role of Gram Panchayat has been carved out. It says when the Gram Panchayat comes across any person holding land within its jurisdiction has kept any such land fallow for two consecutive years, it may make an application to the Tahasildar for initiation of proceeding. Even though in such a effective case of land so that no such land becomes unused, still the legal provision only cast a duty on the panchayat to report to the authority about non use of land which consequently attracts penalty from the person who keeps the land fallow. The result is that panchayat does not have a positive role to play for promotion of agriculture.

For purposes of protection of agricultural field from trespass by animal the Cattle Trespass Act 1871. It provides for establishment of pounds. Pounds shall be established such places as the Magistrate of the District directs. The State government's power under Section 4 of the Act is to exercise a general or overall control of cattle pounds in the state. A private citizen is not entitled to have his own pound or to claim the right to impound the offending cattle of other citizen in a private pound. Act does not prohibit taking seized cattle to a pound situated in a village under different Gram Panchayat then one in which the cattle were seized¹⁶.

16 1973 Cut LR (Cri) 355 (359).



A major aspect of any review of laws relating to agriculture must include agricultural measures during and after natural calamities. The Orissa Relief Code in Chapter XII provides for agricultural measures and provision of credit. The Orissa Relief Code says "As Agriculture is the main occupation of the rural people in the State and as the holdings are small, vigorous intensive agricultural measures are for developing agriculture in modern lines and for ensuring production against the vicissitudes of natural calamities that visit the State almost every year". Agricultural measures like Kharif Programme, Supply of Seeds, Supply of Fertilisers, Dug-well Irrigation Scheme, Precautionary measures before flood, damage by flood, pest attack control measures, problem of sand cast lands, Rabi programme have been contemplated to address the situation. Orissa Relief Code makes a provision for credit facilities to sagging of the morale of the people affected by calamities like severe drought, flood, cyclone or tidal inundation. In such circumstances liberal advances may be given under the Agriculturists Loan Act 1884 until normal conditions are restored. The Orissa Relief Code provides that "Those who cannot get credit assistance from the Cooperative or other banking institutions, will have to be given distress Taccavi Loan under the Agriculturists Loans Act by the Revenue Officers for purchase of seeds, fertilisers, bullocks, etc. for which necessary provision has to be made by the Revenue Department in its budget" {Section 233 (2)}. In order



to address Agriculture in a situation of distress or natural calamity the Orissa Relief Code contemplates administrative relief organisation (Chapter-II). As per the provision the Revenue Department and the Board of Revenue coordinate work of all the Departments of the Government almost 18 departments and heads of departments are jointly responsible for implementation of relief operation. The Member, Board of Revenue and the Special Relief Commissioner at the State level is directly responsible to Government for all kinds of relief operation in the affected areas. The Government has also established Orissa State Disaster Mitigation Authority for this purpose. The Code contemplates provision for association of people's representative with the administration of relief under which Panchayat Samiti and Grama Panchayat can be associated in the organisation of relief measures in the Blocks {Section 19(2)}. However, practically the Government Departments and the Special Relief Commissioner as well as presently Orissa State Disaster Mitigation Authority undertake relief operation including measures to address agriculture and credit facilities.

Apart from the above mentioned legislations enacted by Orissa Legislative Assembly or regulatory measures by Government of Orissa, there are the host of legislation available at the central level to govern and regulate various themes relating to agriculture. The following paragraphs provide an insight into



the central legislation having bearing on agriculture in relation to panchayat. In this case also selected legislations have been covered out of a variety of legislation. The relevant piece of central statutes is only reviewed in the context of the constitutional mandate for devolution of power and authority upon Panchayat.

The Protection of Plant Varieties and Farmers' Right Act, 2001, a central legislation which extends to all India except the state of Jammu and Kashmir, is an important legislation pertaining to the establishment of an effective system for protection of plant varieties, the rights of farmers and plan breeders and to encourage the development of new varieties of plants.

The Protection of Plant Varieties and Farmers' Rights Act was passed by the Indian Government in 2001. After India became signatory to the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) in 1994, a legislation was required to be formulated. Article 27.3 (b) of this agreement requires the member countries to provide for protection of plant varieties either by a patent or by an effective sui generis system or by any combination thereof. Thus, the ember countries had the choice to frame legislations that suit their own system and India exercised this option. The existing Indian Patent Act, 1970 excluded agriculture and horticultural methods of production from patentability. The sui generis system for protection of plant varieties was developed integrating the rights of breeders,



farmers and village communities, and taking care of the concerns for equitable sharing of benefits. We attempt here to critically analyse the provisions of legislations for their effective implementation¹⁷.

The PPVFR Authority proposed to be established under the Act has a crucial role to play for effective implementation of the Act. The duty of the Authority is to promote, by such measures as it may think fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders [Section 8 (1)]

The Act defines the privilege of farmers and their right to protect varieties developed or conserved by them [Chapter VI]. Farmers can save, use, sow, resow, exchange, share and sell farm produce of a protected variety except sale under a commercial marketing arrangement (branded seeds) [Section 39 (1), (i)–(iv)]. Further, the farmers have also been provided protection of innocent infringement when, at the time of infringement, a farmer is not aware of the existence of breeder rights [Section 42 (1)]. A farmer who is engaged in the conservation of genetic resources of landraces and wild relatives of economic plants and their improvement through

17 Pratibha Brahma*, Sanjeev Saxena and B. S. Dhillon, The Protection of Plant Varieties and Farmers' Rights Act of India, CURRENT SCIENCE, VOL. 86, NO. 3, 10 FEBRUARY 2004 (<http://www.ias.ac.in/currsci/feb102004/392.pdf>)



selection and preservation, shall be entitled in the prescribed manner for recognition and reward from the Gene Fund, provided the material so selected and preserved has been used as donor of genes in varieties registrable under the Act. The expected performance of a variety is to be disclosed to the farmers at the time of sale of seed/propagating material. A farmer or a group of farmers or an organization of farmers can claim compensation according to the Act, if a variety or the propagating material fails to give the expected performance under given conditions, as claimed by the breeder of the variety.

Agricultural Extension:

The arrangements for agricultural extension in India have grown, over the last five decades, in terms of activities, organisational types and available manpower. Public sector extension, represented mainly by the State Department of Agriculture (DoA), continues to be the most important source of information for the majority of farmers. Activities of other extension agencies, be it Non-Governmental Organisations (NGOs), input agencies, mass media, research institutions or farmers associations, though increasing, are still restricted to certain regions, crops and enterprises. The shifting emphasis of Indian agriculture towards diversification, commercialisation, sustainability and efficiency has made it necessary for the state extension organisations to critically examine their extension



approaches. But the basic issues regarding the type of support required by the farmers and the changes in extension organisation needed to provide these were not addressed.

The role of agricultural extension in the next decade should be quite different from what it was 10 years ago or even now. Its role as a facilitator of agricultural knowledge system would only increase as more participants from private sector would get involved in extension. It is likely that input related extension (seed, fertilizer, machines and chemicals) would move to private sector in the future. The public sector extension would still continue to be the major extension provider in most parts of the country as the private sector alone would not be able to meet even partially the varied needs of farmers. The ability of the system to perform these roles would entirely depend on the pace of internal reforms, the system would undergo. Experience the world over is that it is easy to change farmers than to change government agencies. Internal reforms are thus going to be the greatest challenge for the Indian Extension System¹⁸.

The gap between scientific know-how and field level do-how has been widening in the recent years. This knowledge deficit needs to be overcome speedily to enhance farm productivity

18 Policy Brief 9, Agricultural Extension in India – The Next Step, January 2000, ICAR, New Delhi.



and profitability. It is well recognized that farmers are changing over the years, both as individuals, as well as their contact with the outside world and their information seeking habits. Today they require 12 extension services unlike two decades ago. As the agricultural sector will be gradually segregating into two different segments- commercial and subsistence the extension system will have to adopt a bimodal approach in its working. Extension machinery needs to be strengthened through retraining and retooling of existing extension personnel. The extension system has to undergo a change in its outlook. 'Talking Type', of extension will be replaced by 'Doing Type'. Reaching the contact farmers and delivering the messages by 'Doing Type' of extension will be emphasized. Agriculture Technology Management Agencies (ATMAs) are operating in all the thirty districts of the State. They are the knowledge centres for the farmers that provide information on inputs, farm practices and market intelligence. However, the functioning of ATMAs need to be improved substantially. ATMAs will be properly equipped, both in terms of training and manpower. Agriculture graduates will be motivated to undertake Agricultural Consultancy Services. Such Agricultural Consultants will act as catalysts in bringing the desired changes in cropping system, introduction of new technologies, providing market information and other required support to enhance the income of farmers. These consultants will be trained in the Agriculture University and provided a package of



technology that is locally acceptable. Presently, the extension work is being done by the institutions in the public domain. In the changed scenario, besides the public sector agencies, agri-clinics, farmers' organizations, farmers' field schools, cooperatives, Panchayati Raj Institutions, NGOs and para-technicians will be encouraged for extension activities. Emphasis will be laid on promoting farmers to farmers learning by setting up Farm Schools in the field of progressive farmers. One lead farmer for each Gram Panchayat will act as 'Krushak Sathi'. The Krushak Sathi will be appropriately trained so that they serve as effective contact points for dissemination of Agriculture Technology to other farmers in the Gram Panchayat. Linkages between the Department and Research Institutions like OUAT, CRRRI and CIFA etc. will be strengthened so as to facilitate a smooth transfer of technology to the farmers. The KVKs in the districts would be the Link Points on researchable issues in the farm sector. The technological dissemination and adoptions will be as per the bottom up planning by the farmer advisors and Block Technology Team (BTT) of experts reflected in the Block Action Plans (BAPs). Gram Krushak Manch (GKM) in every revenue village will be used as a tool to increase outreach to more number of farmers. Strategic Research Extension Plan (SREP) approach for identification of the farmers' problems and farmers-scientist interactions (FSI) for development of appropriate technology solutions will be encouraged. Opening



of 'Information Kiosks' by interest agri-entrepreneurs will be encouraged. Farm Information and Advisory Centre will be opened in all Blocks. The existing State Level Training Institute (IMAGE) and other Regional Level Training Institute (RITE) will be revamped with latest capacity building tools and technologies, infrastructure and skill human resources. Selected best farmers would be given cash award at Block, District and State level every year. The officers of the Department at each level will be professionally trained to upgrade their skills and technical knowledge in partnership with Institutes of repute.

Broadly, so far as agricultural extension as a separate subject from agriculture is concerned it is not regulated through legislative measure but it is governed by state policies. Various forms of agricultural extension services have been contemplated under schemes and Departmental functions.

2. Land improvement, implementation of land reforms, land consolidation and soil conservation.

The subject remit relating to land as a matter listed in 11th Schedule is broad based and covers a wide range of themes like land improvement, implementation of land reforms, land consolidation and soil conservation. When each specific themes mentioned under the matter listed in 11th Schedule is considered for the purpose of devolution of power to panchayat



it encompasses various kinds of activities. Each of it is thematically discussed within the context of the law that regulates specific subjects in the following paragraphs.

Land improvement, by and large is hardly regulated by State. However loan for the purpose of land improvement is covered under law. In this regard Land Improvements Loans Act 1883 makes provision for loan to land holders. This Act provides that “Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the State Government, for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person”. Under this Act land improvement consists of “any work which adds to the letting value of land, and includes the construction of wells, tanks and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture; the preparation of land for irrigation; the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, or land used for agricultural purposes or wasteland which is culturable; the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes; the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and such other works



as the State Government may, from time to time, by notification in the Official Gazette, declare to be improvements for the purposes of this Act". Loan can be granted where the applicants interest in the land is sufficient. When the applicants are a body of five or more co-villagers who bind themselves jointly and severally for the repayment of the loan, they can obtain loan. As per the provision Revenue Divisional Commissioner, Collector, Tehsildars and Sub-Collector have the power to sanction loan up to the fixed limits. In order to obtain loan, lands which are not transferable without the landlord's consent should not ordinarily be accepted as security where a loan is sanctioned an agreement in appropriate form shall be executed by the applicant or applicants. This law originated in the pre-colonial period and does not contain any specific provision with regard to involvement of panchayat.

Besides, in a general approach, land improvement largely depends on the kind of land being taken up for improvement. The land status describes the possibility for its use. Suppose the land is earmarked as village forest there is a certain procedure of law to change its status for common use for the purpose other than for which it is earmarked.

Broadly land improvement is possible only if the title holder has an absolute control over it. Land improvement can be undertaken without any legal impediment if the title holder authorises or undertakes himself for its improvement.



Panchayat can also undertake land improvement if it owns any land. When Panchayat proposes to undertake improvement of land which is under the possession of others as title holder or such land is in some form or other a govt land in those cases it is regulated by subject laws. However, land improvement of Government owned land might require reform in the law if the Panchayat proposes to undertake improvement of various kinds of land like wasteland, forestland, community land etc. When the land is free from any kind of encumbrances the Panchayat has more freedom and very often it is at liberty to undertake improvement.

It has been noticed recently that laws like National Rural Employment Guarantee Act 2005 has made provision for land improvement as a prescriptive work that can be undertaken for purposes of making available employment. While this law empowers Gram Panchayat for various purposes like preparation of list of beneficiaries, distribution of job card, entertains applications for job, it also authorises Gram Panchayat for selection of nature of activity to be undertaken. In this case Panchayat can select land improvement as one of the prescriptive activity to be undertaken. Thereby land improvement related activities have entered into the domain of law in a slightly indirect way.

IWDP has been under implementation since 1989-90 wherein wastelands are being developed with the active participation of

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stakeholders i.e. user groups, self help groups and PRIs. Here, the projects are sanctioned in favour of DRDAs/ZPs for the period of five years. The projects are implemented through the Project Implementing Agencies (PIAs) which can be a Line Department or a reputed NGO having sufficient experience in the field of watershed development. The programme is implemented all over the country. IWDP is a 100 per cent Central Sector scheme. The cost norm is Rs.4000 per hectare. The basic objective of this scheme is to take up integrated wastelands development based on village/micro watershed plans. The stakeholders prepare these plans after taking into consideration land capability, site conditions and local needs. The scheme also helps in generation of employment in rural areas besides enhancing people's participation in the wastelands development programmes at all stages. This leads to equitable sharing of benefits and sustainable development.

Land reforms have been viewed both as a means for achieving redistributive justice and as means for attaining higher levels of agricultural production and income in the rural areas. Access to land is still a major source of employment and income in rural areas. Therefore, the issue of agrarian restructuring continues to receive the priority. The major components of the Land Reforms Policy include among others, detection and distribution of ceiling surplus lands, tenancy reforms, consolidation of land holdings, providing access to poor on



common lands and wastelands, preventing the alienation of tribal lands and providing land rights to women. Further, for the successful implementation of land reforms, updating of land records by traditional methods as well as through computerisation is an essential prerequisite. Since land is a State subject, the responsibility of implementing land reforms rests with the State Governments. However, two Centrally Sponsored Schemes (CSS) viz; 'Strengthening of Revenue Administration and Updating of Land Records' (SRA & ULR) and 'Computerisation of Land Records' (CLR) are being implemented by the Ministry of Rural Development.

Land reform is generally understood as reform of law relating to land tenure and agrarian restructuring. The term land reform has not been defined anywhere in the present legislation. However, the objective statement of the Orissa Land Reform Act 1960 stated that the legislation aims at bringing progressive legislation relating to agrarian reform and land tenures consequent on gradual abolition of intermediary interest and to confer better rights on agriculturists and to ensure increased in food production. It confers higher rights on real cultivators and put to an end to absentee landlords. The land reform law also envisages to achieve fix ceilings units in respect of agricultural holdings, determine surplus lands and settle the same with landless people. An analytical examination of the Act leaves no scope for doubt that the legislative



intention in formulating the law is to achieve the contemplated results at the earliest opportunity¹⁹. The Land reforms makes a clear provision for conferring higher rights on the real cultivator. Therefore, it has come with time schedule for effecting there reforms with a view to conferring higher rights to the cultivators.

The scope of work for Panchayat for purposes of implementation of land reform is restricted as it creates administrative machinery for implementation of land reform with constitution of a Land Commission. The scheme of the Act clearly indicates that there is a hierarchy of authorities to administer the provisions of this Act and those authorities are competent to decide all questions of fact and law which fall to be considered under any of the provisions of the Act. Thus apart from creating a complete code which authorises investment of powers in the said hierarchy of authorities to administer the Act, it also creates new rights and provides new remedy²⁰. For the purpose of land reform there exists systematic administrative machinery for implementation of land reforms²¹. The present institutional arrangement has been made under Sections 53-57 which inter-alia covers Constitution

19 (Kulamani Kar vrs. Orissa Land Reform Tribunal, 55 (1983) CLT 537; Bansidhar Das vrs. Durjodhan Majhi, 59 (1985) CLT 44)

20 Sankar Kumar Vrs. Tahasildar, AIR 1976 Orissa 103.

21 See Chapter V Administrative Machinery for Implementation of Land Reforms of Orissa Land Reforms Act 1960.



of Land Commission, District Executive Committee and Local Committee. In this regard the Govt. may by notification constitute a Land Commission. The Commission shall consist of 7-members of whom three shall be officials and four non-officials to be nominated by the Govt. The Land Reform Commissioner shall be the ex-officio Secretary to the Land Commission. The Commission shall review the progress of the Land Reforms from time to time, publish report at least once a year and shall advice Govt. in all matters relating to Land Reforms (Section 54). The District Executive Committee shall review the progress of Land Reform in the district (Section 56). The Govt. may constitute Local Committees for different areas of the State. Accordingly, Local Committees may be constituted for each Revenue Inspector's Circle. The functions of the Local Committee shall be as may be prescribed and the business of the Committee shall be conducted in the prescribed manner. The important functions of Local Committee as per the law are preparation and publication of draft statement after the consultation with Local Committee²², publish the revised draft statement after consultation of Local Committee and settlement of surplus lands vested in Govt. under Section 45.

22 Section 43 of the Act regarding preparation and publication of draft statement showing ceiling and surplus land in accordance with Section 29 DDD and Section 27-C of corresponding Rule.



The Orissa Land Reform Act does not recognise Panchayat or any other elected body in the administrative machinery but gives much importance to Local Committee which is virtually to be made by the govt selecting the people of that particular area. Therefore, the Gram Panchayat can be empowered if the Act can be amended in the relevant provision to include Panchayats or the constitution of Local Committee can be amended to include the members of Panchayat inside as the members of Local Committee.

The Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972²³ and its Rules 1973 are the relevant subject law which deals with the consolidation of lands in Orissa. This law provides for consolidation of holdings and prevention of fragmentation of land for development of agriculture in the state of Orissa. The law was enacted in the context of strategy for increasing agricultural production in the country and in pursuance thereof to give inducement and incentive to the cultivators. The law aims at consolidation of scattered holdings and rearrange the holdings including fragmented holdings among various land owners to make them more compact and to provide against future fragmentation of holdings. The law envisages economic farming and application of improved implements and methods of farming which are necessary for development of agriculture and increased

²³ As amended by Orissa Act No. 2 of 1989.



agricultural production²⁴. In this law consolidation has been defined as amalgamation and redistribution of parcel or parcels of lands comprised in different holdings of a unit for the purpose of rendering such holdings more compact²⁵. However, holding shall not include lands which are covered by orchards, groves or homesteads. Land which is subject to severe fluvial action, intensive soil erosion or prolonged water logging or is otherwise unfit for cultivation shall not be considered as holdings. The law contemplates a determinant scheme for consolidation. For purposes of preparation of map and land register, the state Govt. when it is of the opinion that any area which shall comprise a village or a group of villages may be brought under consolidation operation issue a notification to that effect whereupon it shall become lawful for the authorities appointed under the law to undertake consolidation operation. The law for purposes of its implementation authorises State Govt. to notified Consolidation Commissioner, Director of Consolidation and Consolidation Officer. Similarly, the law makes a provision for having Consolidation Committee for each unit consists of at least one representative of landless persons of each category of land owners of the unit and one among Scheduled Caste and Scheduled Tribe {Section 2 (i)}. In this regard a unit means one or more villages notified for the

24 Statement of Objects and Reasons, See Orissa Gazette Ext. No. 52/7.1.1972.

25 Section 2 (f) of The Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act 1972.



purpose of forming a single scheme of consolidation {Section 2 (u)}. It is a grassroots body constituted as a representative institution to be consulted in appropriate cases to give effect to the Act. A significant position has been accorded to the Consolidation Committee under various provisions of the Act like under Section 6 (2) (c) provides that the Director of Consolidation shall determine the valuation of land, house etc. in consultation with Consolidation Committee, similar consultation has been proposed under Rule 12 and 13, under Section 8 preparation of statement of principles in consultation with Consolidation Committee, reservation of lands for public purpose is also to be determined by the Consolidation Committee {Section 8 (2) (a) and Rule 17}, disposal of objection by the Consolidation Committee and vesting of land contributed to public purpose and allotted to State Govt. (Section 30 read with Section 17). Consultation with Consolidation Committee is mandatory without which the settlement of principle is void²⁶. Preparation of provisional consolidation scheme without consulting the members of the Consolidation Committee is illegal²⁷. A scheme drawn without constitution of Consolidation Committee is bad²⁸.

26 AIR 1989 NOC 68 All.

27 AIR 1970 All 241.

28 AIR 1978 NOC 68.



Soil health enhancement holds the key to raising farm productivity. Restoration of soil health and fertility is one of the prime needs of Orissa's Agriculture. Extensive campaign would be organized with the involvement of NGOs and PRIs for motivating farmers to restore fertility by addition of green manure and through other corrective measures²⁹.

3. Minor irrigation, water management and watershed development

The Panchayat, in accordance with 11th Schedule are conferred with subjects like Minor irrigation, water management and watershed development. These subjects are presently governed by a number of legislations enacted by the State Assembly. It is pertinent to mention that subjects like Minor irrigation, water management and watershed development come under entry 17³⁰ of List II – State List subject to the provision of entry 56³¹ of List I – Union List of the Constitution. In view of this the State Assembly enacted laws on the above subjects. The subject relating to Minor Irrigation is regulated by Orissa Irrigation Act 1959 (Orissa Act 14 of 1959) with subsequent amendments in 1974 (Orissa Act 21 of 1974) and

29 Soil Testing and Restoration of Soil Health and Fertility, State Agriculture Policy 2008.

30 Water, that is to say, Water Supplies, Irrigation and Canals, Drainage and Embankments, Water Storage and Water Power.

31 Regulation and Development of inter-state Rivers and River Valleys to the extent to which such regulation and development under the control of Union is declared by Parliament by law.



the Orissa Irrigation (Validation) Act 1992. The Orissa Irrigation Rules 1961 has been framed there-under. The Act regulates irrigation, assessment and levy of water rate and cess in force in different parts of Orissa and to provide for the regulation of use of water from Government source. The Act defines Minor Irrigation work as an irrigation work having a culturable command area of not more than 2000 hectares {Section 4 (10a)}. The term irrigation work includes (a) all reservoirs, tanks, anicuts, dams, weirs, canals, barrages, channels, pipes, wells, tube-wells and artesian wells constructed, maintained or controlled wholly or mainly by the State Government or by any Panchayat Samiti, constituted under the Orissa Panchayat Samiti and Zilla Parishad Act, 1959 (Orissa Act 7 of 1960) on behalf of such Government for the supply or storage of water; (b) all works, embankments, structures, supply and escape channels connected with such reservoirs, tanks, anicuts, dams, weirs, canals, barrages, channels, pipes, wells, tube-wells and artesian wells and all roads constructed for the purpose of facilitating the construction or maintenance of such reservoirs, tanks, anicuts, dams, weirs, canals, barrages, channels, pipes, wells, tube-wells and artesian wells; (c) all water courses and drainage works as herein defined; (d) all lands occupied by the Government for the purpose of such reservoirs, tanks, anicuts, dams, weirs, canals, barrages, channels, pipes, wells, tube-wells and artesian wells and all buildings, machinery, fences, gates and other structures, occupied by or belonging to the



State Government upon such lands. Minor irrigation system broadly tends to constitute irrigation system under an irrigation project having irrigable commanded area up to 2000 hectares and shall include lift irrigation points and creek irrigation projects (See explanation given to irrigation system under Section 2 (O) of Orissa Pani Panchayat Act 2002).

A review of Orissa Irrigation Act with Rules reveals that the subject law has not ensured devolution of power in relation to the subject of minor irrigation to Panchayats. Even though the definition of irrigation work categorically mentions Panchayat Samiti constituted under Orissa Panchayat Samiti and Zilla Parishad Act 1959 but such mention has been made only for the purpose that if any irrigation work maintained or controlled wholly or mainly by Panchayat Samiti.

In case of irrigation the Orissa Legislature has also enacted in the post 73rd Constitutional Amendment a law namely Orissa Pani Panchayat Act 2002 (Orissa Act 10 of 2002) to provide for farmers participation in the management of irrigation systems and for matters connected therewith or incidental thereto. This Act in its Object Statement declares that the State of Orissa is essentially an agricultural State depending on an efficient and equitable supply and distribution of water which is a national wealth ensuring optimum utilisation of water by farmers for improvement of agricultural production. It also stated that farmers organisation have to be given an effective role in the



management and maintenance of the irrigation system for equitable and dependable supply and distribution of water. In this regard this law provides for farmer's participation in the management of irrigation systems by way of forming Pani Panchayat. For the purpose of this Act farmers organisation includes Pani Panchayat at the primary level consisting of all the water users as constituted within a specified hydraulic boundary of a major, medium, minor flow and lift both surface and ground water and creek irrigation projects. It also includes Distributary Committee at the secondary level and Project Committee at the project level. Even though this Act typically usages the term Panchayat it cannot be compared with Gram Panchayat which is completely different from Pani Panchayat.

A watershed is a geo-hydrological unit, which drains into common point. The watershed approach is a project based, ridge to valley approach for in situ soil and water conservation, afforestation etc. Unit of development will be a watershed area of about 500 ha. each in watershed development projects. The thematic maps generated from satellite data for different themes such as land use/land cover, hydro geo -morphology, soils etc. may be used for selection of a watershed area. The project will primarily aim at treatment of non-forest wastelands and identified drought prone and desert areas.

The Watershed approach has conventionally aimed at treating degraded lands with the help of low cost and locally accessed technologies such as in-situ soil and moisture conservation



measures, afforestation etc. and through a participatory approach that seeks to secure close involvement of the user-communities.

The broad objective was the promotion of the overall economic development and improvement of the socio-economic conditions of the resource poor sections of people inhabiting the programme areas. Many projects designed within this approach were, at different points of time, taken up by the Government of India. The Drought Prone Areas Programme (DPAP) and the Desert Development Programme (DDP) were brought into the watershed mode in 1987. The Integrated Wasteland Development Programme (IWDP) launched in 1989 under the aegis of the National Wasteland Development Board also aimed at the development of wastelands on watershed basis.

All these three programmes were brought under the Guidelines for Watershed Development with effect from 1.4.1995. Other major programmes now being implemented through this approach are the National Watershed Development Project in Rainfed Areas (NWDPR) and the Watershed Development in Shifting Cultivation Areas (WSDCA) of the Ministry of Agriculture (MoA).

The Guidelines for Watershed Development (2001) have now been reformulated inter-alia, to ensure (i) Programme-specific and focused project approach, (ii) Greater flexibility in implementation, (iii) Well -defined role for State, District and Village level Institutions, (iv) Removal of overlaps, (v) A



provision for keeping the Watershed Development Projects on probation, (vi) An "Exit Protocol" for the PIAs, (vii) A "Twin track" approach to the implementation of projects, (viii) Seeking a combination of GO/NGO as PIA, (ix) A greater role of women, (x) An effective role for the Panchayat Raj Institutions, (xi) Bringing to centre-stage SHGs comprising rural poor, especially those, belonging to SC/ST categories, (xii) Establishing a credit facility from financial institutions, (xiii) Transparency in implementation and (xiv) Effective use of remote sensing data furnished by NRSA.

These Guidelines are applicable to IWDP, DPAP and DDP and any other programme notified by the Government of India. The Watershed Development Projects under DPAP/DDP will be taken up in the Blocks notified under respective Programmes. Such Projects, under IWDP will generally be implemented in the Blocks other than those notified under DPAP/DDP as well as the Blocks having similar projects under International Cooperation Schemes such as Sustainability of Livelihood/Watershed Development projects funded by international donor agencies.

The Zilla Parishads and other Panchayati Raj Institutions (PRIs) shall have very important role to play in Watershed Development Programmes. Wherever the DRDA has been made responsible for implementation of the watershed programmes, the Chief Executive Officer of the Zilla Parishad shall be a member of the DWDC. The PRIs shall have the right



to monitor and review the implementation of the programme and provide guidance for improvements in the administrative arrangements and procedures with a view to ensure convergence of other programmes of Ministry of Rural Development such as JGSY, SGSY, IAY, CRSP, Rural Drinking Water Supply etc.

At the Village level, the Gram Panchayat shall be fully involved in the implementation of the programme, specially community organisation and training programmes. It may use its administrative authority and financial resources to support and encourage the formation of SHGs/UGs, the operation and maintenance of the assets created during project period and the common property resources such as pasture lands, fisheries tanks, plantations on village common lands, etc. The Gram Panchayats may also ensure that funds from other developmental programmes of MoRD are used to supplement and complement the Watershed Development Programmes. The Gram Panchayat shall be empowered to review and discuss the progress of watershed development programme in its meetings. The watershed action plan should have the approval of Gram Sabha and it should be a part of annual action plan of Gram Sabha. The Secretary, Watershed Committee shall provide all information in respect of action plan, funds earmarked for various activities, details of expenditure progress of works and future plan of action to the Gram Panchayat/ Gram Sabha.

The ZP/DRDA in whose favour the project has been sanctioned will be entitled to affect recovery of funds from any



institutions/organisations/individuals and take appropriate action under law if the project is not properly implemented or funds are misutilised or not spent as per Guidelines.

The Zilla Parishads, Panchayat Samitis and the Gram Panchayats are also entitled to take on the responsibility of implementing a cluster of watershed projects in the capacity of Project Implementation Agencies, if they so desire. However, in all such cases, they shall also follow the norms prescribed for PIAs under these Guidelines.



4. Animal Husbandry, Dairying and Poultry.

By and large, animal husbandry is understood as a kind of farming that involves keeping animals to produce food. An animal has been regarded as a creature but not a bird, fish, a reptile, an insect or human. Farming of animals includes dairying and poultry. Animal husbandry is a subject which has not been included in any of the List in the Seventh Schedule for purposes of division of legislative power between Union and State Legislatures. However, prevention of cruelty to animal has found a place in List III – Concurrent List. The Govt. at national and state level encompasses a variety of activities through its administrative divisions constituted either specially or included in a broader subject. Animal husbandry as a subject is not amenable to regulation under law largely. In spite of that a few legislation exist to regulate certain aspects in relation to animal husbandry.

The Orissa Animal Contagious Disease Act 1949³² and Rules 1957 was enacted for the control of disease in animals. For the purpose of this Act animal means any domesticated animal or bird, or any animal or bird kept in confinement. Infective animal is one which is affected with a scheduled disease or has recently been in contact with or in close proximity to an animal so infected. The law proposes to authorise control over

³² Act No. 8 of 1949.



animals which would cause infection and places from where infection would spread. Control of contagious diseases is an important part of any programme of development of animal husbandry. This law has identified scheduled diseases. State Government has the power to appoint Inspectors who can enter and inspect any land or building or other place or any vessel or vehicle for the purpose of exercising the powers. Panchayats seem to have no role under this Act. However, if the panchayat operates any animal husbandry where the animals are infected by scheduled contagious disease they are under obligation to immediately report it to the Veterinary Surgeon of the locality.

In the area of poultry certain aspects are regulated. The Orissa Cattle and Poultry Feed (Regulation) Act 1979 is one such Act which aims at regulation of production and quality of cattle and poultry feed. The success of Dairy Development and Poultry Development Programmes depends mainly on the quality of cattle and poultry feed. Due to increase demand for cattle feed and poultry feed various manufacturing firms have come into the field to manufacture cattle feed and poultry feed. But the quality of feed varies from firm to firm and in any case is below the desired standard. In some cases where the quality of the feed is as per the proper standard the cost is higher and the farmer is not able to purchase it. In some other cases manufacturers produce low quality of feed at lower cost for



quick profit in their business. As a result of production of low quality of feed, not only the Dairy Development and Poultry Development Programmes are affected, the dairy and poultry farmers also sustain heavy loss due to low production of milk and eggs on account of malnutrition. In this backdrop this law has been enacted with a provision of licensing authority to permit manufacture of pre-mixed cattle feed or pre-mixed poultry feed.

The Goshalas in this State are privately managed institutions and are dependent on public contributions, though neither and general public nor the State Government have any control over their management. These institutions have however potentialities for the implementation of various cattle development schemes and programmes. For the smooth and efficient running of these institutions, it is necessary to regulate by law their financial resources and pattern of working. With this end in view it is proposed to undertake a legislative measure in this regard as otherwise it is not possible to achieve the desired results. Accordingly, the Orissa Goshala Act 1961 was enacted. Under this law "Goshala" means a charitable institution established for the purpose of keeping, breeding, rearing and maintaining cattle or for the purpose of reception, protection and treatment of infirm, aged or diseased cattle and includes a 'Pinjrapole' where such cattle are kept. Under this Act there shall be Trustees for every Goshala. It will be entered

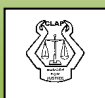


in a registered Goshala. Section 4 envisages the appointment of Registrar by the State government to control the Goshala. A bare reading of the Act reveals that Goshala can be established by way of a Trust which shall be entered in the register to be maintained by the Registrar to be appointed for this purpose.

In order to regulate improvement of live-stock the legislature of Orissa enacted the Orissa Livestock Improvement Act in 1957. It broadly provides that no person shall keep a bull which has attained the prescribed age except under and in accordance with the terms, conditions and restrictions of a licence granted under Section 5 unless it is certified by the prescribed officer that the bull has been effectively castrated by a method and manner approved by the Director (Section 4). The Licensing Officer appointed under the Act may by notice served in the prescribed manner require that any bull or bull-calf which has attained the prescribed age at the date when notice is served shall be castrated. The government subject to the provisions of the Act by notification declared that only such Brahmini bulls as are approved shall be used for breeding purpose. Therefore, if any Panchayat proposed or proposes to develop a Animal Husbandry or Dairy Farming for which bull or bull-calf are also kept a licence is required to be obtained from the licence officer designated under the Act.



For the purpose of dairy development the National Dairy Development Board has been established. The National Dairy Development Board (NDDB) was set up in 1965 by the Government of India as a registered society with the primary objective for providing technical services to implementing agencies in building up their dairy projects on co-operative lines on the pattern of the Kaira District Co-operative Milk Producers' Union Limited Anand, popularly known as the 'Anand pattern'. The National Dairy Development Board has since been progressively playing a wider role together with the Indian Dairy Corporation which is a company formed in 1970 to give supportive assistance in the implementation of the Operation Flood Programmes. The Central Government had appointed a Committee.- Commonly known as the Jha Committee which had recommended the formation of a body corporate to perform the functions of both these institutions taking care to ensure that the autonomy and freedom and flexibility presently enjoyed by the National Dairy Development Board is not adversely affected thereby. To achieve the above, it is proposed to declare the National Dairy Development Board as an institution of national importance and incorporate it as a statutory body with the enlargement of functions of the National Dairy Development Board over the years, it is felt that the functions of both the institutions can henceforth be performed by the corporate body and as such it is proposed to vest the undertakings of the Indian Dairy Corporation in the body



corporate and dissolve the Indian Dairy Corporation. The Indian Dairy Corporation, a company formed and registered under the Companies Act, 1956, and the functions of the National Dairy Development Board are complementary to each other and aimed at achieving common objectives. An Act to declare the institution known as the National Dairy Development Board in the State of Gujarat to be an institution of national importance and for the vesting in that body corporate of the undertakings of the Indian Dairy Corporation with a view to provide for the administration and the carrying on of the functions to be performed by the body corporate more effectively throughout the country and for matters connected therewith and incidental thereto. Accordingly, the National Dairy Development Board Act 1987 has been enacted by the Parliament of India. Under this law the support of National Dairy Development Board can be obtained to strengthen dairy development.

The Government of India launched a National Meat and Poultry Processing Board on 19th Feb 2009. The formation of this Board has been notified in the Gazette of India Extraordinary vide notification no 127 dated 20th January, 2009. The Board has been registered on 26th March, 2009 under the Indian Societies Registration Act, 1860. The Board started functioning from the leased accommodation at 7/6, Association of Municipalities & Development Authority (AMDA Building),



Sirifort Institutional Area August Kranti Marg, New Delhi. The National Meat and Poultry Processing Board is an autonomous body and would initially be funded by the Government of India for two years and would be managed by the industry itself. The Board will have 19 Members including CEO of the Board & the Chairman is from the industry. This industry driven institution has been launched to work as a National hub for addressing all key issues related to Meat and Poultry processing sector for the systematic and proper development of this sector. “The Board would serve as a single window service provider for producers/manufacturers and exporters of meat and meat products, for promoting & regulating the meat industry as a whole and it would result in large number of employment opportunities. It would also help the rural farmers for increasing their income”, said Shri Subodh Kant Sahai, Minister of Food Processing Industries during the launch ceremony of the Board on 19th February 2009 in New Delhi. The Board will also help industry to utilize slaughterhouse waste materials, set up quality control laboratories for meat and meat products, promote meat manufacturers to adopt Good Manufacturing Practices (GMP), Hazard Analysis and Critical Control Points (HACCP) systems, ISO-9001: 2000 standards, help industry to create and disseminate data, train workers and technicians and work as a central and National hub to address meat & poultry processing related issues so that more hygienic & whole some meat & poultry products are available to the consumers.



5. Fisheries

Fisheries is one of the subject which falls under the functional domain of the panchayat. A part of sea or a river where fish are caught in large quantity is considered as fisheries. Fishery and pisi-culture are used almost synonymly. Fishery is a subject for legislation which found place in entry 21 of List II – State List in Seventh Schedule under Article 246 which means the legislatures of the State in India can make laws for its regulation. Fishing and fisheries beyond territorial waters come under union list along with regulation and development of inter-state rivers and river valleys.

In private water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity can be used for fisheries without state interference. Such private water shall not seized to be private water within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

The Indian Fisheries Act 1897 is a central Act relating to inland fisheries for which State amendments are possible. It offers protection to fisheries against explosives or dynamites. Protection of fish in selected waters by rules of state government is also permissible. Such rule may prohibit or regulate matters like erection and use of fixed engines,



construction of weirs and dimension and kind of the nets to be used and the modes of using them. Section 7 of the Act says Arrest without warrant for offences under this Act (1) Any police officer, or other person specially empowered by State Government in this behalf, either by name, or as holding any office, for the time being, may, without any order from a Magistrate and without warrant, arrest any person who committed in his view any offence punishable under this Act. This section may be revised to substitute "Panchayats is place of "any other person" empowered by State Government in this behalf.

The Marine Fishing Regulation Act, 1978 is a model Act which provides guidelines to the maritime states to enact laws for protection of marine fisheries by regulating fishing in the territorial waters. The measure includes regulation of mesh size and gear, reservation of zones for various fishing sectors and also declaration of closed seasons. The law framed and amended by different maritime states. There is a Deep Sea Fishing Policy exists since 1991.

The State Reservoir Fisheries Policy has been framed with the understanding that Orissa state with its immense water resources has tremendous scope for augmenting fish production for the growing fish eating population and also generating rural employment. During the last five decades, the state has utilized its closed water bodies viz.- ponds and tanks



through scientific aquaculture both in fresh water and brackish water sectors. But open water bodies like reservoirs, rivers, estuaries, lakes, lagoons, canals, swamps etc. which are vast in terms of area and productive capacities are mostly untapped or under tapped. Accordingly, this Policy comes into force under which a provision has been made about ownership. It says "Fishing rights of all reservoirs above 40 hectares (100 acres) shall be vested with Fisheries & ARD Department. The fishing rights of all reservoirs up to 100 acres will be transferred to respective Gram Panchayats for leasing them out to Primary Fishermen Cooperative Societies registered under Orissa Cooperative Societies Act, 1962 or Societies registered under Orissa Self-help Cooperative Societies Act, 2001 etc. Transfer of Fishing rights to the Fisheries & ARD Department and the Gram Panchayats of the reservoirs, to be created, shall be an automatic process after impoundment. All such transfer shall be effected unless and otherwise any water body is specifically earmarked for any specific purpose by the Government". Although the Policy recognizes Gram Panchayat for purposes of leasing out ownership, the policy itself does not recognize Gram Panchayat in the strategy to be adopted for use of reservoir for fishing purpose. The strategy interalia provides that The reservoirs of the major, medium and minor irrigation projects, the fishing right of which has been transferred to Fisheries and Animal Resources Development Department shall be leased out to the nearest Primary Fishermen Cooperative Society/ Societies formed under the Orissa Cooperative Societies Act, 1962 or Society/ Societies registered under the Orissa Self-help Cooperative Societies Act, 2001 (P.F.C.S.). Preference will be given to displaced



persons/ project affected persons (who are poor and interested in becoming active fishermen) in conferment of fishing rights. In case a particular reservoir is leased out to more than one Primary Fishermen Cooperative Society (P.F.C.S.), the area allotted to each P.F.C.S. should be identified properly to avoid any dispute in future.

The Parliament of India has also enacted the Coastal Aquaculture Authority Act 2005 to provide for the establishment of a Coastal Aquaculture Authority for regulating the activities connected with coastal aquaculture in the coastal areas and for matters connected therewith or incidental thereto. "Coastal aquaculture" means culturing, under controlled conditions in ponds pens, enclosures or otherwise, in coastal areas, of shrimp, prawn, fish or any other aquatic life in saline or brackish water; but does not include fresh water aquaculture. The Authority shall exercise the following powers and perform the following functions, namely, to make regulations for the construction and operation of aquaculture farms within the coastal areas; to inspect costal aquaculture farms with a view to ascertaining their environmental impact caused by coastal aquaculture; to register costal aquaculture farms; to order removal or demolition of any coastal aquaculture farms which is causing pollution after hearing the occupier of the farm; and to perform such other functions as may be prescribed.

6. Social forestry and farm forestry.



The term 'Social forestry' first used in 1973 by The National Commission on Agriculture, Government of India. It was then that India embarked upon a social forestry project with the aim of taking the pressure off currently existing forests by planting trees on all *unused and fallow land*. Social forestry, schemes that have been started all over the country have made a considerable difference in overall forest cover in a short time. Afforestation outside the conventional forest area for the benefit of rural and urban communities. The major plantation projects including social forestry plantation projects are mixed plantations and reforestation of degraded forests carried out under the five-year plans. Social forestry also aims at raising plantations by the common man so as to meet the growing demand for timber, fuel wood, fodder, etc, thereby reducing the pressure on the traditional forest area. This concept of village forests to meet the needs of the rural people is not new. It has existed through the centuries all over the country but it was now given a new character.

Need for a social forestry scheme was felt as India has a dominant rural population that still depends largely on fuel-wood and other biomass for their cooking and heating. This demand for fuel wood will not come down but the area under forest will reduce further due to the growing population and increasing human activities. Yet the government managed the projects for five years then gave them over to the village panchayats (village council) to manage for themselves and generate products or revenue as they saw fit. Through the social forestry scheme, the government has involved community participation, as part of a drive



towards afforestation, and rehabilitating the degraded forest and common lands.

At present in almost all the countries where social forestry programmes have been taken up, both commercial and non commercial farm forestry is being promoted in one form or the other. Individual farmers are being encouraged to plant trees on their own farmland to meet the domestic needs of the family. In many areas this tradition of growing trees on the farmland already exists. Non-commercial farm forestry is the main thrust of most of the social forestry projects in the country today. It is not always necessary that the farmer grows trees for fuel-wood, but very often they are interested in growing trees without any economic motive. They may want it to provide shade for the agricultural crops; as wind shelters; soil conservation or to use wasteland. Farm Forestry is another name for Agro-forestry; a part of Social Forestry.

Another scheme taken up under the social forestry programme, is the raising of trees on community land and not on private land as in farm forestry. All these programmes aim to provide for the entire community and not for any individual. The government has the responsibility of providing seedlings, fertilizer but the community has to take responsibility of protecting the trees. Some communities manage the plantations sensibly and in a sustainable manner so that the village continues to benefit. Some others took advantage and sold the timber for a short-term individual profit. Common land being everyone's land is very easy to exploit. Over the last 20 years, large-scale planting of Eucalyptus, as a fast growing



exotic, has occurred in India, making it a part of the drive to reforest the subcontinent, and create an adequate supply of timber for rural communities under the augur of 'social forestry'.

Farm forestry is another name of agro forestry which is a part of social forestry. In agro-forestry, silvi-cultural practices are combined with agricultural crops like leguminous crop, along with orchard farming and live stock ranching on the same piece of land. In lay man language agro-forestry could be understood as growing of forest tree along with agriculture crop on the same piece of land.

In a more scientific way agro-forestry may be defined as a sustainable land use system that maintains or increases the total yield by combing food crop together with forest tree and live stock ranching on the same unit of land, using management practices that takes care of the social and culture characteristic of the local people and the economic and ecological condition of the local area.

7. Minor Forest Produce

'Minor Forest Produce' is the 7th item among 29 subjects enlisted on the Eleventh Schedule of the Constitution of India. 'Forest' is the subject matter of List-III (Concurrent List) in the Seventh Schedule of the Constitution of India. As a mater of constitutional principles, Parliament of India and Legislature of State have enacted laws relating to subject of forest.



Orissa has 58,136.87 square kilometers forest area, which constitutes 37.34% of the geographical area of the State. The forests are concentrated mostly in Central, Southern and Western regions of the State covering the district of Angul, Bolangir, Boudh, Dhenkanal, Ganjam, Kalahandi, Kandhamal, Mayurbhanj, Nayagarh, Sambalpur, Sundergarh. The forestlands are classified as Reserved Forest (26329.12 Sq. Km), Demarcated Protected Forest (11,687.78 Sq. Km), Undemarcated Protected Forest (3838.78 Sq. Km), Unclassified Forest (20.55 Sq. Km), and Other Forest under the control of the revenue department (16261.34 Sq. Km).

Government of Orissa has enacted number of laws mentioned below relating to forestland classification, forest development, forest conservation, control of forest produce trade, etc.

1. The Orissa Forest Act, 1972
2. The Orissa Forest (Amendment) Act, 1982
3. The Orissa Communal Forest and Private Lands Act (Prohibition of Alienation Act, 1948
4. The Orissa Kendu Leaves (Control of Trade) Act, 1961
5. The Orissa Kendu Leaves (Control of Trade) Rules, 1962
6. The Orissa Excise (Mahua Flower) Rules, 1976
7. The Orissa Timber and Forest Transit Rules, 1980
8. The Orissa Forest Produce (Control of Trade) Act, 1981
9. The Orissa Village Forest Rules, 1985



10. The Schedule Tribes & other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
11. The Schedule Tribes & other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008

Prior to National Forest Policy (NFP), 1988, Non-Timber Forest Products (NTFP) were commonly known as Minor Forest Produces (MFPs) which included Kendu Leaves and all biological materials other than the timber extracted from natural forests for human and animal use. Orissa Grama Panchayats (Minor Forest Produce Administration) Rules-2002 list out 68 numbers of minor forest produces [Rule 2(I) (III)].

Following the NFP, Government of Orissa formulated a new policy on procurement and trade of NTFP in their resolution No.5503/ F & E dated 31st March 2000. According to this policy, Gram Panchayats have been authorized to regulate the purchase, procurement and trade of NTFPs in order to provide fair prices to the primary gatherers of NTFPs. The policy resolution provided a list of 68 items of NTFP for which no transit permit would be required for transport of any those items within the State as well as a list of 9 restricted items of NTFP where permission from the government of Orissa would be required for collection and trade of those items. In order to ensure the payment of fair procurement prices of the NTFP to the primary gatherers, Government of Orissa made a resolution on 12th October 2001 by empowering the District Collector to fix up the minimum prices of different items of NTFPs in



consultation with DFO (Territorial), District Panchayat Officer, District Welfare Officer, Local representative of TRIFED, the local representative of the Orissa Forest Development Corporation Ltd. and the local representative of the Women and Child Development Department.

Three forest products namely *kendu leaf*, *sal-seed*, and *bamboo* are nationalized by the Orissa government. The trading of these items is made through Orissa Forest Development Corporation (OFDC), and Tribal Development Cooperative Corporation of Orissa Limited (TDCCOL). OFDC is involved in trading of timber and non-timber forest produces whereas TDCCOL is involved mainly on non-timber forest produces. The TDCCOL procures MFP and Surplus Agriculture Produces (SAP) from tribal at the fair and remunerative prices.

According to Section-44 of Orissa Gram Panchayats Act, 1964, Gram Panchayats are responsible to undertake, control, and administer the matters relating to minor forest produce. The law where reference has been made to minor forest produce is analyzed below with regard to the role and responsibilities of the panchyats in the respective subject law.

The Orissa Gram Panchayats (Minor Forest Produce Administration) Rules, 2002: In exercise of powers conferred by clause (w) of sub-section -44 read with section-150 of Orissa Gram Panchayats Act 1964, Government of Orissa framed Orissa Gram Panchayats (Minor Forest Produce



Administration) Rules, 2002³³, which lays down procedure for Procurement and formulating trading of MFP; Registration of traders; Fixation of minimum price of MFP; Cancellation of registration; and Appeal against the decision of Gram Panchayats. According to Rule –3 (i), the Gram Panchayats have power to regulate procurement and trading of minor forest produce that are produced in government lands, forest areas within the limits of the concerned gram panchayat GP, or collected from reserve forest and brought in the grama.

However, in case of forest area where *Vanasarakshyana Samiti* is formed, panchayats shall give priority to such *samiti* for collection and trading of minor forest produce. Gram Panchayats are also empowered for registration and cancellation of license of the trader of minor forest produce. The person intending to procure minor forest produce from the primary gatherers or to trade minor forest produce in gram panchayat is required to apply to gram panchayat for registration. The Sarapanch, with the approval of the concerned gram panchayat, shall register the applicant as the trader in minor forest produce for trading year, which ends in the month of September of every calendar year (rule-4). The Panchayat Samiti is empowered to fix –up the minimum price of procurement of different minor forest produce in the month of September every year, which can be also modified by the gram panchayat. District Collector, by convening special meeting with the DFO, Tribal Development Corporation, Tribal Cooperative marketing Development Federation of India, may

33 SRO No. 934/2002, dated 14.11.2002, Panchayat Raj Department, Government of Orissa.



fix-up the minimum price for procurement of Minor Forest Produce if Panchayat Samiti fails to do so. Sarapanch has power to cancel the registration of trader if he does not pay minimum price of procurement to the primary gatherers fixed by the GP. As per the rules, public sector undertakings such as Orissa Forest Development Corporation (OFDC), Orissa Tribal Development Cooperative Corporation (OTDCC), and Tribal Cooperative Marketing Development Federation (TCMDF) are considered as deemed registered bodies for trading of minor forest produces.

The Orissa Excise (Mahua Flower) Rules, 1976: Mahua Flower is one among the 68 types of minor forest produces enlisted in the schedule of Orissa Gram Panchayats (Minor Forest Produce Administration) Rules, 2002. Under these rules, gram panchayats are empowered to regulate the procurement and trading of minor forest produces that are either produced in government land and in forest areas within the territorial jurisdiction of the grama or collected from the reserve forest and brought into the grama. The Orissa Excise (Mahua Flower) Rules, 1976 defines mahua flower as the matured sugary flower otherwise called mahua, mohwa, mhowa which blossom and fall or, are collected from the tree known as mohwa tree (*Bassia latifolia*, or *Bassia longitolia*)³⁴. These rules exercise regulation and control over the possession, storage, transport

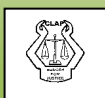
34 Rule-1 (8) of the Orissa Excise (Mahua Flower) Rules, 1976



and trade over the mahua flowers. Permission of the District Collector is mandatory for any person, firm, cooperative society or government establishment who desires to store or possess mahua flower over and above the stipulated time limit and fixed quantity, to import mahua flower from any place outside the state, to export mahua flower to any place outside the state, and to make retail sale of the mahua flower.

The Orissa Forest Produce (Control of Trade) Act, 1981 & The Orissa Forest Produce (Control of Trade) Rules, 1983: The objective of this law is to control and regulate the trade of forest produces. As per this law, State Government may appoint Gram Panchayat as one of the agents for the purpose of any trade in specified forest produce. Other agents may be any person, Co-operative Society, Tribal Development Cooperative Corporation, or Orissa Forest Development Corporation. The law prescribes for the constitution of an Advisory Committee for each Revenue Commissioner's Division to advise the state government for fixation of fair reasonable price of each of specified forest produce to be purchased by the agent.

Orissa Kendu Leaves (Control of Trade) Act, 1961 & Orissa Kendu Leaves (Control of Trade) Rules, 1962: The trade of Kendu Leaves is regulated and controlled by the State Government under this statute. Restriction has been imposed on the purchase and transport of kendu leaves. Any person desiring to sell kendu leaves or grower of kendu leaves shall



sell those only to the government, or any authorized officer of the government or any agent appointed by the government. Subject to the quality of the kendu leaves for the purpose of manufacture of bidis, government and their officer or authorized agent of the government is bound to purchase the kendu leaves at the fixed price. After consultation with the Advisory Committee constituted under this statute, Government shall annually fix up the purchasing and selling price of the kendu leaves. The panchayats are the shareholders of the net profits derived by the government from the trade of kendu leaves. According to this Act, an amount not being less than fifty per centum of the net profit shall be paid to the panchayats, i.e. to Gram Panchayats, Panchayat Samitis, and Zilla Parishad (Section-11). The sums paid to the panchayats shall be utilized in accordance with the respective laws of gram panchayats, panchayat samitis, and zilla parishad.

Kendu leaf is a nationalized product. Kendu leaf is collected and processed by the forest department and is sold by the Orissa Forest Development Corporation through open tender. OFDC is also involved in collection, processing and trading of honey, which is listed as a minor forest produce under Orissa Gram Panchayats (Minor Forest Produce Administration) Rules, 2002.

The Orissa Village Forestry Rules, 1985: These rules are made in consonance with section-31 & clause (d) of section-82 of the



Orissa Forest Act, 1972 for the management of village forest. The rules prescribe for the constitution of *Village Forest Committee*³⁵ comprising the Sarapanch (as the chairman of the committee) of the concerned gram panchayat, ward member of the same village, forester of the concerned revenue section, and 3-5 selected persons of the said village. The committee is authorized to (i) demarcate boundaries of the village forest; (ii) give permit to the beneficiaries for conversion, collection, or removal of forest produce;(iii) distribute all available forest produce from the village forest amongst the beneficiaries for their bona-fide use or consumption; and (iv) sell part of the forest produce for generating funds for management and regeneration of village forests.

Schedule Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: This Act provides a framework to record and recognize the rights and occupation in the forest lands of forest dwelling schedule tribes and other traditional forest dwellers who have been residing there for generations but their rights are not recorded. This law endows right of ownership, access to collect, use and dispose of minor forest produces to the forest dwelling schedule tribes and other traditional forest dwellers. Minor Forest Produce is defined as *all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons,*

35 Rule 3 (1) of Orissa Village Forestry Rules, 1985.



honey, wax, lac kendu leaves, medical plants and herbs, roots, tubers and the like includes all non-timber forest produce of plant origin including kendu leaves [Section-2 (i)]. Even though this law allows the government for diversion of forest land for the purpose of establishing schools, hospital, anganwadis, fair prices shop, electric or telecommunication lines, minor water bodies and tanks, drinking water supply, and water pipelines, water or rain water harvesting structures, minor irrigation canals, non-conventional sources of energy, vocational training centers, roads, and community centers, but the clearance of such projects has to be recommended by the gram sabha. The Act prescribes for the constitution of Forest Rights Committee at the Gram Panchayats level, as well as the constitution of Sub-Divisional Level Committee, and District Level Committee where block panchayats (Panchayat Samitis) and district panchayats (Zilla Parishad) have the representatives. Gram Sabha is the competent authority to (i) initiate the process of determining the nature and extent of forest rights, receive, and hear the claims thereto; (ii) prepare a list of claimants of forest rights and maintain a register containing such details of claimants; (iii) pass a resolution on such claims; and (iv) consider the resettlement package. Any aggrieved person to the resolution of gram sabha may file a petition before the Sub-Divisional Level Committee within 60 days from the date of the resolution passed by the gram sabha.



9. Khadi , Village and Cottage Industries:

Khadi and Village industries are regulated under the Orissa Khadi and Village Industries Board Act, 1955, the Orissa Khadi and Village Industries Board Rules 1956, the Orissa Khadi and Village Industries Regulations 1960 and the Orissa Khadi and Village Industries Board (Functions and Conduct of Business of Committees) Regulations 1981. It provides for establishment of a statutory board for organizing, developing and regulating the Khadi and Village Industries in the state of Orissa. Under this law Khadi has been defined as “Any handloom cloth woven from yarn handspun in the union of India”. Village Industry is perceived under the law as all industries whether carried on within a village or outside it, which from the normal occupation whether whole time or part time of any class of rural population of the state of Orissa and in particular such industries as the State Government may by notification specify in this behalf in consultation with the Board. Village industry shall not include any handloom industries which produced cloth other than Khadi. Under this Act the Orissa Khadi and Village Industry Board has been constituted which is duty bound to organize, develop and regulate Khadi and Village Industry in the state. This law however does not create any regulatory regime for production by any individual or agencies rather it has the power to encourage, assist grant loan and organize cooperative societies as well as village production councils for promotion of khadi and village industry.

At the central level Khadi and Village Industry Commission has been constituted. For this purpose the Parliament in the



Seventh Year of the Republic of India enacted the Khadi and Village Industries Commission Act 1956³⁶. This is an Act to provide for the establishment of a Commission for the development of khadi and village industries and for matters connected therewith. Under this Act "Khadi" means any cloth woven on handlooms in India from cotton, silk or woollen yarn handspun in India or from a mixture of any two or all of such yarns. Village Industries has been defined as any industry located in a rural area which produces any goods or renders any service with or without the use of power and in which the fixed capital investment per head of an artisan or a worker does not exceed [one lakh rupees] or such other sum as may, by notification in the Official Gazette, be specified from time to time by the Central Government; Provided that any industry specified in the Schedule and located in an area other than a rural area and recognised as a village industry at any time before the commencement of the Khadi and Village Industries Commission (Amendment) Act, 1987 shall, notwithstanding anything contained in the sub-clause, continue to be a village industry under this Act; Provided further that in the case of any industry located in a hilly area, the provisions of this sub-clause shall have effect as if for the words "one lakh rupees", the words "one lakh and fifty thousand rupees" had been substituted. (ii) any other non-manufacturing unit established for the sole purpose of promoting, maintaining, assisting, servicing (including mother units) or managing any village industry.

³⁶ Act No. 61 of 1956 as amended on 22nd March 2006.



The functions³⁷ of the Commission shall generally be to [plan, promote, facilitate, organise] and assist in the establishment and development of khadi and village industries in the rural areas in coordination with other agencies engaged in rural development wherever necessary. (2) In particular, and without prejudice to the generality of the foregoing power, the Commission may take such other steps as it may think fit, (a) to [plan and organise, directly or through specified agencies], training of persons employed or desirous of seeking employment in khadi and village industries; (b) to [build up, directly or through specified agencies,] reserves of raw materials and implements and [supply them or arrange supply of the raw materials and implements] to persons engaged or likely to be engaged in production of handspun yarn or khadi or village industries at such rates as the Commission may decide; (c) to encourage and assist in the creation of common service facilities for the processing of raw materials or semi-finished goods and for otherwise facilitating production and marketing of khadi or products of village industries ; (d) to promote the sale and marketing of khadi or products of village industries or handicrafts and for this purpose forge links with established marketing agencies wherever necessary and feasible; (e) to encourage and promote research in the technology used in khadi and village industries, including the use of non-conventional energy and electric power, with a view to increasing productivity, eliminating drudgery and otherwise enhancing their competitive capacity and to arrange for

³⁷ Substituted by Act 12 of 87, S.9 (w.e.f. 24.07.1987).



dissemination of salient results obtained from such research; (f) to undertake directly or through other agencies studies of the problems of khadi or village industries; (g) to [provide financial assistance, directly or through specified agencies,] to institutions or persons engaged in the development and operation of khadi or village industries and guide them through supply of design, prototypes and other technical information for the purpose of producing goods and services for which there is effective demand in the opinion of the Commission; (h) to [undertake, directly or through specified agencies, experiments,] or pilot projects which in the opinion of the Commission are necessary for the development of khadi and village industries; (i) to establish and maintain separate organisations for the purpose of carrying out any or all of the above matters; (j) to promote and encourage cooperative efforts among the manufacturers of khadi or persons engaged in village industries; (k) to ensure genuineness and to set up standards of quality and ensure that products of khadi and village industries do conform to the said standards, including issue of certificates or letters of recognition to the concerned persons; and (l) to carry out any other matters incidental to the above (Section 15)³⁸.

The Commission shall have three separate funds to be called the khadi fund, the village industries fund and the general and

³⁸ *Explanation* – the expression "specified agencies" means the agencies which the Central Government may, by notification in the Official Gazette, specify in this behalf.



miscellaneous fund. There shall be credited, (a) to the khadi fund, all sums received by the Commission for the purposes relating to khadi; (b) to the village industries fund, all sums received by the Commission for the purposes relating to village industries and products of handicrafts; (c) to the general and miscellaneous fund, all other sums received by the Commission {Section 18(1)}. Grants and subsidies shall be paid only to among others a gram or village panchayat, a panchayat samiti, a municipality, a zilla parishad or any similar body established under any State law for the time being in force {Section 32 (3-e) of Rules 2006}³⁹.

10. Rural Housing

The Orissa Housing Board Act 1968 provides for suitable measures for making of schemes and carrying out of works necessary for dealing with and satisfying the need of housing accommodation. The law authorises the Housing Board constituted under the Act to incur expenditure and undertake works in any area for the framing and execution of such housing schemes as it may consider necessary. This law authorises the Housing Board to undertake and execute housing projects and allied activities. Housing in any area including rural housing has not been control or regulated if such steps are taken by any other person or agencies. Therefore, there is no bar if rural housing is undertaken by Panchayat.

³⁹ Khadi and Village Industries Commission Rules, 2006.



Orissa Rural Housing & Development Corporation Limited⁴⁰ was incorporated as a housing finance Company, limited by share on 19th August 1994 with its Head Office at Bhubaneswar and obtained a certificate for commencement of Business from Registrar of Companies, Orissa, on 23rd September 1994. ORHDC is the First Rural Housing Finance Company promoted by a State Government in the country. ORHDC is approved by the National Housing Bank as one of the 29 approved Housing finance Companies in the country. Main Objectives Of the Company is to function as principal institution for financing, promoting and developing rural housing and related activities and act as a facilitator with the objective of providing thrust on fire-proof shelter upgradation and building cost-effective houses with the technology developed in the Building Centres.

The National Housing Bank Act, 1987⁴¹ is an Act to establish a bank to be known as the National Housing Bank to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto.

The National Housing Bank for purposes of rural housing contemplated the Golden Jubilee Rural Housing Finance

⁴⁰ A Govt. of Orissa Enterprise.

⁴¹ Act No. 53 of 1987 [23rd December, 1987.]



Scheme. The objective of the Scheme is to address the problem of rural housing through improved access to housing credit which would enable an individual to build a modest new house or to improve or add to his old dwelling in rural areas. "Rural Area" for the purpose of the Scheme is the area comprised in any village including the area comprised in any town, the population of which does not exceed 50,000 as per the 1991 Census. The Scheme envisages at normal rates of interest, the provision of institutional credit to individuals desirous of constructing/ acquiring new dwelling units and for improving or adding to existing dwelling units in rural areas. There will be two channels. The first channel will comprise exclusively the commercial banks and the second channel will comprise institutions like the ARDBs, ACHFS, RRBs and HFCs. At the time of formation of the Scheme, was envisaged that the commercial banks being the largest mobilisers of savings in the economy and having a vast network of branches, including "rural" would play an important and extensive role in successful implementation of the Scheme. It was therefore, envisaged that they may take a major share of the proposed disbursements under the Scheme.

Bharat Nirman is a time-bound business plan of Government of India in partnership with State Governments and Panchayat Raj Institutions for a period of four years covering 2005-09 for developing the infrastructure facilities of Rural India. The objectives of the plan are as follows:



- Every village to be provided electricity: remaining 1,25,000 villages to be covered by 2009 as well as connect 2.3 crore households
- Every habitation over 1000 population and above (500 in hilly and tribal areas) to be provided an all-weather road: remaining 66,802 habitations to be covered by 2009
- Every habitation to have a safe source of drinking water: 55,067 uncovered habitations to be covered by 2009. In addition all habitations which have slipped back from full coverage to partial coverage due to failure of source and habitations which have water quality problems to be addressed
- Every village to be connected by telephone: remaining 66,822 villages to be covered by November 2007
- 10 million hectares (100 lakh) of additional irrigation capacity to be created by 2009
- 60 lakh houses to be constructed for the rural poor by 2009

Bharat Nirman has made an impressive progress in the 2007-08. This ambitious programme is now over 1,000 days old. At the current pace, on each day of the year, 290 habitations are provided with drinking water and 17 habitations are connected through an all weather road. On each day of the year, 52 villages are provided with telephones and 42 villages are electrified. On each day of the year, 4,113 rural houses are completed. For Bharat Nirman, Rs. 31,280 crore have been provided [including the North Eastern Region (NER) component] as against Rs. 24,603 crore in 2007-08.



National Housing Bank, an all India financial institution, set up under the Act of parliament and a wholly owned subsidiary of Reserve Bank of India, has launched a new programme called Productive Housing in Rural Areas (PHIRA) under which a composite loan of housing and income generation is extended. The objective of this scheme for rural housing is to facilitate construction of houses for rural families and also to provide a source of sustainable income to the rural poor which would develop their repayment capacity. Persons marginally above the poverty line in rural areas. Purpose of loan is to provide financial assistance for construction of a decent house and thereafter starting or augmenting income generating activity in one of the following categories so as to enable the borrower to repay the loan.

- Small business/ Trade,
- Tiny/ cottage industry or service activity,
- Artisan activities,
- Agricultural and allied activities
- Any other productive activity

Rural Housing Fund (RHF),2008 for lending towards rural housing undertaken by people falling under the weaker section category, as defined in the RBI guidelines on lending to priority sector like *Small and marginal farmers with land holding of 5 acres and less, and landless labourers, tenant farmers and share croppers; Women, All individuals eligible for loans under SWARNJAYANTI GRAM SWAROZGAR YOJANA (SGSY) and Differential Rate of Interest (DRI) i.e. classified as BPL or marginally above the poverty line, Scheduled Castes,*



Scheduled Tribes & Persons from minority communities as may be notified by Government of India from time to time. “Rural area” for the purpose of the scheme is the area comprised in any village including the area comprised in any town, the population of which does not exceed 50,000 (as per the 1991 census).

PLIs(Primary Lending Institutions) are expected to utilize this Refinance Assistance and assist such persons to have a shelter of their own by extending need-based housing loans to them. PLIs are also encouraged to avail of refinance from NHB under its other scheme to enable ‘leverage’ of RHF so that the principal objective of increasing/upgrading housing stock in the rural areas is served. Accordingly, the refinance availment procedures at NHB have been redefined to provide for single point contact, approval and disbursement.

The Housing and Urban Development Corporation Ltd. (HUDCO) was incorporated on April 25, 1970 under the Companies Act 1956, as a fully owned enterprise of the Government of India. Financial assistance is available to any state govt.agency such as housing board, rural housing board, district boards, panchayat, taluka development board etc. which is nominated by the state govt. for underatking such schemes with hudco's financial assistance. The schemes being financed by hudco in rural areas are EWS rural housing schemes for the landless and EWS rural housing schemes for



the land owning category Village abadi scheme including repairs.

For purposes of rural housing, there are two schemes presently in operation in Orissa. IAY is a cash subsidy based programme, under which assistance is provided to rural BPL families for constructing dwelling units on their own using their own design and technology. Selection of IAY beneficiaries is carried out by Gram Sabhas. 60% of the funds provided under IAY are meant for SC and ST beneficiaries and the subsidy is sanctioned either in the name of the female member of the household or jointly in the names of both spouses. The present per unit assistance is Rs. 35,000 in plain areas and Rs. 37,500 in hilly and difficult areas. Funding under IAY is provided by the Centre and the State in the ratio of 75:25. However, In the case of Union Territories, the entire funds under this Scheme are provided by the Government of India. Out of it Indira Awas Yojana 1996 has been formulated as a central sponsored scheme. This scheme provides financial assistance to eligible beneficiaries. The scheme has identified Below Poverty Line (BPL) families as its eligible beneficiaries. The Government also makes arrangement for supply of materials at concessional rate the amount of which is adjusted from the financial assistance. In this scheme the Gram Panchayat has been entrusted with the responsibility to select the beneficiary which shall consequentially to be approved by the Panchayat Samiti based on list of beneficiary.



Similarly, the State Government also runs a scheme called Mo Kudia Scheme from the financial year 2008-09 for the benefit of deserted widow and destitute women, physically and mentally challenged, leprosy patient and HIV/AIDS inflicted persons. Victims of flood and fire affliction or destroyed by elephants can also be supported under the Scheme. As per the scheme those BPL families who are left out from enumeration during 1997 and deprived from central scheme may also be supported. Similarly, primitive tribes will be given priority under the scheme in scheduled areas. The Gram Panchayat has been provided with the responsibility to select and approve the eligible beneficiaries in the Palli Sabha. The list of beneficiaries so prepared by the Gram Panchayat shall be considered for approval by Panchayat Samiti.

11. Drinking Water

Drinking Water is the 11th item of the Eleventh Schedule of the Constitution of India. As per the Orissa Gram Panchayat Act, 1964, the gram panchayats have responsibility for construction, maintenance of works for the supply of water and, and regulation of the sources of water supply for drinking purposes. There is a flagship rural drinking water programme of the central government titled *Rajiv Gandhi National Drinking Water Programme (RDWP)* where panchayat is recognized as an institution for planning, monitoring, implementation, and maintenance of village water system. The RDWP aims at



providing safe drinking water in adequate quantity to all rural habitations in the country including rural schools and anganwadis. The Rural Development Department of Government of Orissa is responsible for the implementation of RDWP through state, district, and panchayat level agencies. As per RDWP Guidelines (Revised on 1st April, 2009), a Village Water and Sanitation Committee is to be set up as Standing Committee in each gram panchyats for planning, implementation, operation, monitoring, and maintenance of water supply scheme. The elected members of the gram panchyats shall have representations to the committee. The guidelines also prescribe for the convergence of VWSC with the Village Health Committee (VLC) set up under National Rural Health Mission (NRHM). The VWSC is responsible for village water security plan. The District Water Security Plan is developed on the basis of on village water security plans of the district. A District Water and Sanitation Mission is constituted at the district level, which works under the supervision, control, and guidance of Zilla Parishad.

12. Fuel and Fodder.

Forest in the country has suffered serious depletion. This is attributable to relentless pressure arising from ever increasing demand for fuel-wood, fodder and timber, inadequacy of protection measures, diversion of forest land to non-forest use without ensuring compensatory afforestation and essential



environmental safeguards and the tendency to look upon forests as revenue earning resource⁴². In this backdrop the National Forest Policy 1988 sets its objective for meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal population⁴³. Provision of sufficient fodder, fuel and pasture, specially in areas adjoining forest, is necessary in order to prevent depletion of forest beyond the sustainable limit. Since, fuel-wood continues to be the predominant source of energy in rural areas, the programme of afforestation should be intensified with special emphasis on augmenting fuel-wood production to meet the requirement of the rural people⁴⁴.

A massive need based and time bound programme of afforestation and tree planting, with particular emphasis on fuel-wood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative. Village and community lands, including those on foreshores and environs of tanks, not required for other productive uses, should be taken up for development of tree crops and fodder resources. The revenues generated through such programmes should belong to the panchayats where the lands are vested in them, in all other

42 Preamble of National Forest Policy 1988.

43 Basic Objectives – 2.1 of National Forest Policy 1988.

44 Essentials of forest management – 3.4 National Forest Policy 1988.



cases; such revenues should be shared with the local communities in order to provide an incentive to them. Lands laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree farming and grow fodder plants, grasses and legumes on their own land. While aiming at enhancing the forest cover in the country and meeting national needs, production of forestry programmes should also be oriented to narrowing, by the turn of the century, the increasing gap between demand and supply of fuelwood⁴⁵.

The National Forest Policy advocates in terms of addressing the need for fuel-wood and fodder under scientific management of forest. The subjects like fuel-wood and fodder is presently regulated under legislations enacted by State Assembly. The Orissa Village Forest Rules 1985⁴⁶ deals with the subject with a provision of constitution of a Village Forest Committee for regulating the management of village forests and for prescribing the conditions for its use. The management of every village forests is vested in a committee comprising the Sarpanch of the concerned Gram Panchayat as the Chairman of Village Forest Committee. Under this Rules the beneficiaries

45 Strategy (4.1 – 4.3.3), National Forest Policy 1988.

46 Made under the powers conferred by Section 31 read with Section 32 and Clause (d) of Section 82 of the Orissa Forest Act 1972.



shall on payment are entitled to forest produce from the village forest for their bona fide use or consumption.

For purposes of grazing of cattle the Government made the Orissa Forest (Grazing of Cattle) Rules 1980. It regulates grazing in forest, protected forest and reserved forest. Under this law any forest area can be declared closed for grazing. Grazing in protected forest is free without permit except in forest areas closed to grazing in forest⁴⁷. In case of reserve forest, no person shall pasture cattle except in the open area for which a permission is granted.

⁴⁷ Section 4 of Orissa Forest (Grazing of Cattle) Rules 1980.



13. Roads, culverts, bridges, ferries, waterways and other means of communication.

Construction and management of various measures for communication like road, culverts, bridges, ferries and waterways are regulated under different laws of State and Central Government. There are various kinds of roads classified under National Highways, State Highways, RD Roads, and also roads constructed especially for private purposes. The Highway Authority of India undertakes construction and maintenance of National Highways. State Highways are controlled and managed by Water Resource Department of Government of Orissa. A bare reading of existing laws relating to roads reveals that construction of roads is normally not prohibited unless it comes in conflict with corresponding provisions under different regulatory mechanisms. These are as like other development projects, the environment acts, policy guidelines of both State and Central Government, Forest (Conservation) Act, 1980; National Forest Policy, 1952, 1988 (Rev.); Environmental (Protection) Act, 1986, and Rules, 1987-2006 (various); Environmental Impact Assessment Notification, 1994 and Notification Dt 14th September 2006; Wildlife (Protection) Act, 1972; National Forest Policy, 1952, 1988 (Rev.); Water (Prevention and Control of Pollution) Act, 1974; Air (Control of Pollution) Act, 1981; Hazardous Wastes (Management and Handling) Rules,



1989; 2006; Public Liability Insurance Act, 1991 and Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996; Motor Vehicle Act, 1988; Central Motor Vehicles Rules; State Motor Vehicles Rules; Guidelines for Rail, Road and Highways Projects, 1989; Noise Pollution Control Act, 1990; Mining Act and Minor Mineral Concession Rules, 2004; Land Acquisition Act, (Amended up to 1984); Orissa Resettlement & Rehabilitation Policy 2006; The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and Labour Act, 1986. All these constitute the legislative framework with respect to the environment including social issues in relation to roads.

Similarly, where construction of road is proposed to be built over private lands or lands belonging to central, state or any other public authorities, land acquisition or allotment is necessary as the case may be for which the provisions of Land Acquisition Act or provision of laws regulating government land are applied. If any land or any right in land is required to carry out any of the purposes of Grama Panchayat, Grama Sasan shall first negotiate with the person or persons having interest in the said land and if the parties fail to reach an agreement, such Grama Sasan may make an application to acquire the land or the right, as the case may be, in the prescribed form and manner to the Collector who may, if satisfied that same is



required for a public purpose take steps to acquire the same⁴⁸. Therefore, it is necessary to make an appraisal of the status of land that is being proposed to be used or acquired for purposes of construction of road. In case of Panchayat undertaking the responsibility of construction of road in the present framework of law, such activities are not prohibited unless otherwise a need arises due to application of the above mentioned laws. In fact Grama Panchayat is authorised under Orissa Grama Panchayat Act to undertake construction, repair, maintenance, alteration and improvement of public streets. In the post 73rd Constitutional Amendment phase all the 29 matters including road, culverts, bridges, ferries, waterways and other means of communication have been inserted in the functional domain of Panchayat at various level by which Panchayats are empowered to undertake the above activities including construction of road without any legal hassle. Broadly, Panchayats can engage themselves in subject areas like roads, culverts, bridges, ferries, waterways and other means of communication as these are not prohibited unless otherwise come in conflict with other regulatory arrangements. Similarly for purposes of maintenance of road other than Panchayat road, there is a need to identify the status of road. Presently the roads are owned by Public Works Department, Irrigation

48 Section 74 of Orissa Grama Panchayats Act, 1964.



Department, Transport Department and National Highway Authority.

It is clear from the above analysis of law that Grama Panchayat is authorised by law to undertake construction of road. In this regard it is important to mention that Village Link Road can be constructed under National Rural Employment Guarantee Act for which the Gram Panchayat can pass a resolution to that end. Besides, Pradhan Mantri Gramya Sadaka Yojana, a central government scheme also provides for villagers/Panchayat to undertake construction of village road. Under Twelfth Finance Commission priority will be given to construct concrete road from office of the Gram Panchayat to the office of Panchayat Samiti. The Backward Rural Grant Fund also makes a provision for village link road.

Culverts and bridges are generally undertaken for construction by the Public Works Department. The appropriate agencies construct culverts and bridges in accordance with existing norms contemplated for construction. As a matter of practice bridges of larger size that come up in National and State Highways are undertaken for construction by various Corporations having expertise and qualify for that purpose. In Orissa the Orissa Setu Nigam operate to construct bridges when Government entrust such responsibility. Culverts and bridges can also be undertaken by Panchayats as a part of construction of road or as a separate component of work where



it has interest in it and such interest does not come in conflict with corresponding laws.

14. Rural electrification including distribution of electricity.

A process of comprehensive reform in the power sector was started in early 90's which culminated with enactment of Electricity Act 2003 by the Government of India. It is pertinent to mention here that electricity is a concurrent subject at entry 38 in List III of 7th Schedule of the Constitution of India. Ministry of Power, Govt. of India is primarily responsible for the development of electrical energy in the country. The Ministry of Power is also responsible for the administration of Electricity Act 2003 and Energy Conservation Act 2001. The Electricity Act 2003 provides an enabling framework for accelerated and efficient development of the power sector. The Act seeks to encourage competition with appropriate regulatory intervention. Competition is expected to yield efficiency gains and in turn result in availability of quality supply of electricity to consumers at competitive rates. The objective of the Act is to introduce competition, protect consumer's interest and provide power to all. It provides for contemplation of National Electricity Policy, Rural Electrification, Open Access in transmission, Phased Open Access in Distribution, Mandatory State Electricity Regulation Commissions, License Free Generation and Distribution, Power Trading, Mandatory Metering and Stringent Penalties for theft of electricity.



It is a comprehensive legislation replacing Electricity Act, 1910. Electricity Supply Act, 1948 and electricity Regulatory Commission Act, 1998. The aim is to push the sector onto a trajectory of sound commercial growth and to enable the States and the Centre to move in harmony and coordination.

The subject of Power is in the Concurrent List and the responsibility for distribution i.e. for supply electricity to consumers lies exclusively with the State Governments. The primary responsibility of bringing about a turn around lies with the States.

The State Electricity Regulatory Commission has been envisaged in the Electricity Regulatory Commissions Act, 1998. As per Section 17(1) of the Act, the State Government may, if it deems fit, establish an Electricity Regulatory Commission for the State. The main functions of the SERC would be to determine the tariff for electricity, wholesale, bulk, grid or retail; to determine the tariff payable for use by the transmission facilities, to regulate power purchase and procurement process of transmission utilities and distribution utilities, to promote competition, efficiency and economy in the activities of the electricity industries, etc. Subsequently as and when each State Government notifies, other regulatory functions could also be assigned to SERCs.



Orissa is the first State in the Country to have undertaken power sector reform and restructuring in power sector to make power supply more efficient and to be able to meet the investment needs of the sector. The Department of Energy was created on 24th April, 1990 consequent upon bifurcation of the erstwhile irrigation and Power Department. The State Electricity Board, which was a monolithic organisation, looking after generation, transmission and distribution of power was unbundled. The Energy Department has three Public Sector Undertakings viz. Grid Corporation of Orissa Limited (GRIDCO), Orissa Hydro Power Corporation Limited (OHPC) and Orissa Power Generation Corporation Limited (OPGC) under its Administrative control. The Orissa Electricity Regulatory Commission (OERC) which is a quasi-judicial independent body, ensure a transparent regulatory regime in the power sector of the State. The Grid Corporation of Oissa Limited (GRIDCO) was entrusted with the responsibility of Transmission and Distribution Systems, whereas Orissa Hydro Power Corporation owned and operated all hydro power generation stations in the State from 1st April 1996. An independent transparent regulatory regime Orissa Electricity Regulatory Commission (OERC) was established in April 1996 in order to look after the regulation measures and also to promote accountability in the sector and to encourage private sector investment.



The Orissa Electricity Regulatory Commission contemplated the Orissa Electricity Regulatory Commission, Distribution (Condition of Supply) Code 2004. This Code governs distribution and supply of electricity.

The Code has classified various categories of consumer in which the provision of public lighting, irrigation pumping and agriculture specified public purpose like hospitals and educational institutions are allowed. Accordingly, panchayat institutions can be a consumer for the above purpose. However, electrification and its distribution is not permitted.

17. Education, including primary and secondary schools

Education has a broader connotation. However, generally education is understood in the institutional context like School and College education. Any attempt to understand the term education in its broader context is difficult to comprehend because the subject education is regulated by a wide spectrum of laws by the State and Union Government at various levels. When the subject of education is reviewed in the context of devolution of power to panchayat it is observed that it is further extended by primary and secondary education. Therefore, in this study of subject laws, an attempt has been made to review the laws that presently regulates primary education and secondary education only. Even though our empirical



investigation reveals that there are instances of panchayat running colleges and various other forms of technical institutions.

As primary education has been governed by the State Governments various legislations have been made for this purpose. Orissa Basic Education Act, 1951 enacted by the State Legislature of Orissa is an Act to provide for making better provision for basic education in the State of Orissa. Basic education means such a system of all-aided education to be imparted through a productive craft in the local environment in which pupils live with a view to making it self-supporting and inculcating a true sense of dignity of labour, as shall be recognised by the State Government from time to time.

The State Government may by notification declare that the basic or primary education of children ordinarily residing in any local area shall be compulsory. The notification shall be issued when the state government is satisfied that local authority concerned has so determined by resolution passed at a general meeting specially convened in this behalf and such resolution has been supported by at least two third of the members present at the said meeting. Further, the local authority concerned has satisfied the State Government that it is in a position is to make adequate provision for funds in respect of schools maintained or aided by it for compulsory basic or primary education. On and from the date the State



Government have declared by notification that the basic or primary education shall be compulsory in any local area within the jurisdiction of any Local Authority, such Local Authority shall be deemed to constitute a basic or primary education authority for carrying out the purposes of this Act⁴⁹. The Local Authority shall appoint a School Committee in respect of any area where State Government issues notice declaring basic or primary education of children compulsory⁵⁰. The expenditure in connection with the maintenance of recognised basic or primary schools in a local area, where Gram Panchayat has been constituted, may be met from the Gram Fund so constituted u/s 40 of the Orissa Gram Panchayat Act⁵¹. If the State Govt. is of the opinion that a Local Authority has made default in any of the requirements of this Act, it may, by notification cancel the order made earlier declaring basic or primary education of children compulsory⁵².

The Orissa Education Act, 1969 has been enacted by the State Legislature to provide for the better organisation and development of educational institutions in the State. This law does not prescribe involvement of Panchayat for better

49 Section 4: Declaring basic or primary education of children compulsory.

50 Section 5: Appointment of School Committee.

51 Section 11: Meeting the expenditure for maintenance of basic or primary schools.

52 Section 15: Cancellation of order declaring basic or primary education of children compulsory.



organisation and development. These legislations provide measures for regulation of primary education. Broadly, the purpose of such legislations are to supervise and control management of education. A general understanding of these laws also reveals that there can be primary schools managed by Government directly or aided schools where assistance in the form of grant is given to schools other than Government schools either wholly or partly. Besides, there are purely private run schools for which only permission is granted. These laws also delineates criteria for selection of teachers for Government schools and conditions for its management.

While, until recently these laws mostly regulated primary education, from April 2010 onwards a central law has come into force recognising rights of children to free and compulsory education. Right of Children to Free and Compulsory Education Act, 2009 is a central Act to provide free and compulsory education to all children of the age of 6 to 14 years. In this juncture it is yet to be made clear about the position of laws that are in place prior to enactment of the central Act. In view of that a review of this central law would be meaningful for purpose of devolution of power to panchayat to plan and implement schemes for primary education. Under this Act, it is the duty of the local authority to establish within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the



commencement of this Act⁵³. The definition of Local Authority includes panchayat by whatever name called along with such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any villages. Such a definition under the newly enacted law at the central level creates space for panchayat, but again leaves scope for involvement of other players. Historically, in the post independence era there has been an administrative set up under the control of designated department of Government.

Panchayat being one of the institutions that come under the definition of local authority, it has certain duty⁵⁴. The central enactment envisages duty of Local Authority⁵⁵ such as Providing free and compulsory elementary education to every child, Ensure availability of a neighbourhood school, Ensuring that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds, Maintaining records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed Ensuring and monitoring admission, attendance and completion of elementary education by every child residing within its

53 School Establishment (Section 6):

54 "Local authority" includes Panchayat or Zilla Parishad (u/s 2 (h) of the Act).

55 Section 9 (a-m) of Right of Children to Free and Compulsory Education Act 2009.



jurisdiction, Providing infrastructure including school building, teaching staff and learning material, Providing special training facility to children directly admitted in a class appropriate to his or her age in case of a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, Ensuring good quality elementary education conforming to the specified standards and norms, Ensuring timely prescribing of curriculum and courses of study for elementary education, Providing training facility for teachers, Ensuring admission of children of migrant families, Monitoring functioning of schools within its jurisdiction, Deciding the academic calendar.

Every school shall have School Management Committee consisting of elected representatives of local authority, parents or guardians of children admitted in such school and teachers. The School Management Committee shall have functions like Monitoring the working of the school, Preparing and recommend school development plan and Monitoring the utilisation of the grants received from the appropriate Government or local authority or any other source⁵⁶. Every School Management Committee shall prepare a School Development Plan, which shall be the basis for the plans and grants to be made by the appropriate Government or local

⁵⁶ Section 21 of RTE Act 2009 regarding School Management.



authority, as the case may be⁵⁷. The Local Authority, in addition to appropriate government, shall ensure specified Pupil-Teacher Ratio in each school within six months from the date of commencement of this Act⁵⁸. Any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction. After receiving the complaint the local authority shall decide the matter as early as possible after affording a reasonable opportunity of being heard to the parties concerned. Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights/National Commission for Protection of Child Right or any other prescribed authority⁵⁹.

There is a provision for establishment of primary schools either jointly with any other Grama Panchayat or otherwise with the prior approval of Panchayat Samiti concerned⁶⁰. Management,

57 Section 22 of RTE Act regarding School Development Plan.

58 Section 25 of RTE Act 2009.

59 Section 32 of RTE Act 2009.

60 Specified under Discretionary Functions of Grama Panchayat u/s 46 of Orissa Grama Panchayat Act, 1964.



Control and Spread of Primary Education in the block is one of the functions of Panchayat Samiti⁶¹. Every Zilla Parishad has the power to undertaken schemes or adopt measures including giving of financial assistance relating to primary, secondary and adult education⁶².

In case of secondary education at present the subject is governed by the Orissa Secondary Education Act, 1953. This is an Act to provide for the establishment of a Board to regulate, control and develop secondary education in the State of Orissa. Under this Act secondary education has been defined as general, special and vocational education forming in itself a complete and purposive whole, which follows immediately such stage of education as has been defined as primary or Basic Education in the Orissa Basic Education Act, 1951 and precedes immediately the stage of education controlled by the University established by law in the State of Orissa. Although a Panchayat can establish High School for purposes of secondary education it is required to be registered for recognition under this Act⁶³.

61 Provided u/s 20 (b) of Panchayat Samiti Act, 1959; substituted vide Orissa Act No. 18 of 1960.

62 Provision for undertaking primary, secondary and adult education u/s 3 (i) of Zilla Parishad Act, 1991 and the provision of grant-in-aid to any school within the district u/s 3 (iv) of Zilla Parishad Act, 1991

63 Section 11 (k) of Orissa Secondary Education Act 1953.



18. Technical Training and Vocational Education

It means any courses of study in engineering, technology, architecture, mining, fine arts, law, management, library sciences, or any other subject which may be notified by the State Govt. The All India Council for Technical Education Act, 1987 provides for the establishment of an All India Council for Technical Education with a view to the proper planning and co-ordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system. This Act however, has not made any provision regarding involvement of Panchayat.

20. Libraries

Library for public enhances access to reading materials and a source of knowledge especially for people who have no or less access to books and materials. In rural Indian a vast chunk of population are deprived of access to books and materials. In this context library for public assumes great significance. The subject library, however, has not found a mention either in obligatory functions or discretionary functions of Gram Panchayat.



The subject Library is presently regulated under Orissa Public Libraries Act 2001. It is a statute enacted by State Legislature in Orissa. It provides for the establishment of a network of public libraries in the State of Orissa and to maintain, regulate, guide, control, supervise, integrate and consolidate the libraries in the State as also to provide for comprehensive rural and urban library service in the State.

The Govt. shall constitute Orissa Public Library Council for the purpose of advising the government on matters concerning the management and development of public library services in the State, formulation of training policies and programmes in relation to such system and services. Among others, one from amongst the Chairpersons of Zilla Parishads in the State shall be the member of such Council⁶⁴.

The services provided by a Public Library include lending of books and references, abstracts, bibliographies and indexes of books and access to information recoded by electronic media.

Public Library is defined as a library which is open to public and established or maintained by the Government; an aided library such as libraries functioning under or other departments of Governments open to the public and includes a Gandhi Pathagar with its branches and delivery stations, if any, and any

64 Constitution of Orissa Public Library Council (u/s 3).



other library, which may be declared by Government from time to time, as a Public Library. It is pertinent to mention that with a view to extending library services to the Block level for dissemination of knowledge and information and furthering the cause of book-promotion in general and providing scope for Gandhian studies in particular, the State Government formulated the Gandhi Pathagar Rules, 1994 in the year of commemoration of the 125th Birth Anniversary of Mahatma Gandhi. Under this Rules there is a provision for establishment of Gandhi Pathagar to be located at each Block headquarters. The Gandhi Pathagar shall function under the over-all supervision of the Panchayat Samiti, as the Block Level Library and Information Centre-cum Reading Room. It shall also include Sections for Gandhian Studies, for children and for neo-literates. The Managing Committee comprises of Chairman of Panchayat Samiti who shall be the Chairman and Vice-Chairman of the Panchayat Samiti as the Vice-Chairman of the Managing Committee.

21. Cultural activities.

Traditional cultural activities take place in rural areas frequently. The role of panchayat is limited in this case. The law of the State generally do not regulate cultural activities. However, provision of financial assistance to organise cultural activities, use of loudspeaker, fire crackers and law and orders are relevant to the theme. In case of grants to cultural



organisation the Orissa Cultural Grants Rules 1995 applies. This Rule has been framed to streamline the provisions of grant-in-aid to cultural organisations as a token of support of the State. Grants are given under the Rule to the autonomous bodies of the State and voluntary organisations. Under the category of State autonomous bodies, the District Council of Culture are covered. Although there is no provision directly available to support cultural activities undertaken by Panchayat, it can be covered either through District Council for Culture or if a notification is made to the effect that the Panchayat are also autonomous bodies of the State for the purpose of the Rules.

22. Market & Faire

The regulation of Melas, Fairs and Festivals comes under obligatory function of Gram Panchayat⁶⁵. The Gram Panchayat is also authorised to demarcate and provide places for use as public market and can also close and suspend any such market⁶⁶. Similarly, no private market can operate without obtaining a licence from Gram Panchayat. In scheduled areas

65 Section 44(t) of Orissa Gram Panchayat Act 1964.

66 Section 58(1) of Orissa Gram Panchayat Act 1964.



the Gram Sasan has the power to manage village market by whatever name called⁶⁷.

When any question arises as to whether any place is a market or not, the Gram Panchayat is required under the law to seek a decision from State Government⁶⁸. When there is a dispute as to whether or not a place located within the Grama Panchayat is a market the State Government is clothed with jurisdiction to decide the dispute only on a reference by the Grama Panchayat concerned. Hence, the dispute as to whether two Grama Panchayats operating market in their respective areas could operate a market on the same day or on different days was beyond the ambit of Section 61. Provisions contained in Section 61 are so clear that it is even difficult to misconstrue and misunderstand its ambit and scope⁶⁹.

Regulation of market is also covered under Orissa Agricultural Produced Market Act for purposes of buying and selling of agricultural produce. In this Act there is a provision for representation of gram panchayat as a member of the market committee {6(b)}. While the opportunity for panchayat is given in the form of representation in the market committee the law also curtails the scope of work of panchayat by making a

67 Section 59 of Orissa Gram Panchayat Act 1964.

68 Section 61 of Orissa Gram Panchayat Act 1964.

69 1991 (II) OLR 26: 72 (1991) CLT 38: 33 (1991) OJD 415 (Civil).



provision that after declaration of a market area the market committee by requisition may require any gram panchayat to transfer to it any land or building in possession of panchayat wholly or partly situated within the concerned market area which immediately before the establishment of the market was being used by gram panchayat for similar purpose (Section 4(4)). Even though this provision also provides for sharing of net income derive there from.

However, in *Talcher Municipality v/s Talcher Regulatory Marketing Committee*⁷⁰ the Supreme Court held that even if a market is owned and operated by a municipality or a panchayat, if a requisition is made by a Marketing Committee under the Orissa Agricultural Produce Marketing Act 1956, the municipality or the gram panchayat is obliged to transfer the same. It may be noted in this regard that in the examination of the case, the arguments adduced on behalf of the municipality do not appear to have stressed the functional domain of municipality and local bodies subsequent the constitutional amendment. It was also not urged that (a) the Orissa Municipal Act having been amended after the 74th Amendment is the latter Act passed by the Legislature with knowledge of laws already existing (b) that the Municipal Act should, therefore prevail over the earlier Orissa APM Act and that (c) under

⁷⁰ 2004(6) SC 65 decoded 28.7.2004 (FF/SC/4).



Article 243N, the provision to take over a municipal market would be repugnant to the Constitution.

A further examination of the Orissa Grama Panchayat Act reveals that a Gazette Notification has been made to the effect that after commencement of the Orissa Grama Panchayat (Amendment) Act 1994 nothing in the Orissa Agricultural Produce Market Act shall apply to it⁷¹. As a result of this amendment, where any land or building or both belonging to any Grama Panchayat has or have been transferred to a Market Committee under Section 4 of the Orissa Agricultural Produce Markets Act, 1956 prior to the appointed date, such land or building or both, as the case may be, shall, if the same continues to be within the area of a Grama, stand transferred to the Grama Panchayat having jurisdiction over the Grama on the appointed date.

Any market set up or established under the Orissa Agricultural Produce Market Act, 1956 which is situated within the area of a Grama and continues as such on the appointed date shall be deemed to be a market allowed to be set up or established under this Act, but shall cease to continue as such after the expiration of a period of three months from the appointed date unless its continuance is allowed further in accordance with the provisions of this Act and the Rules made there-under.

⁷¹ Orissa Gazette Extraordinary No. 426/18.4.1994 Notification No. 6139 – Legis./18.4.1994.



The above provision inserted by amendment in the Orissa Grama Panchayat Act, however, not properly impacted the Rules made under the Act. The Orissa Grama Panchayat Rules in Section 69 still holds that where the management of hat has been transferred from a Grama Panchayat to a Regulated Market Committee under the Orissa Agricultural Produce Markets Act, 1956 the net incomes derived by the Regulated Market Committee from the hat so transferred, shall be shared equally by the Regulated Market Committee and the Grama Panchayat every year. Provided that the share of the Grama Panchayat in any one year shall not be less than 80 per cent of the average net income derived by it from the hat in three years immediately preceding its transfer to the Regulated Market Committee.

26. Social Welfare, including welfare of the handicapped and mentally retarded

Social welfare is generally about people and communities facing contingencies. At a broader level it is about total well being of the entire society. Social welfare involves both objective and value judgments. It is not the same as standard of living but is more like quality of life that includes factors such as the quality of the environment (air, soil, water), level of crime, extent of drug abuse, availability of essential social services, as well as religious and spiritual aspects of life. Modern social welfare measures may include any of the following: the care of destitute adults; the treatment of the

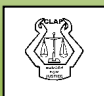


mentally ill; the rehabilitation of criminals; the care of destitute, neglected, and delinquent children; the care and relief of the sick or handicapped; the care and relief of needy families; and supervisory, educational, and constructive activity, especially for the young.

In India social welfare measures are generally rendered under public assistance and social security schemes. These schemes are delivered through Central and Social Welfare Board. The Boards at the central and state level have been established by the respective governments under the Societies Registration Act. An analysis of the present legal and institutional arrangement reveal that social welfare can be rendered by any authority or institutions as it is not prohibited. In some cases registrations of institutions are essential to run social welfare institutions for women and children.

Social welfare of physically challenged and mentally retarded are governed under central legislations like Persons with Disability (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 and Mental Health Act. These Acts casts various kinds of responsibility like prevention of disability, creation of employment, adult education and protection on local authority and appropriate government which covers Panchayats.

27. Welfare of the weaker sections and in particular of the Scheduled Castes and Scheduled Tribes.



Weaker section has not been defined in the constitutional and legal provisions. Article 15 of the Indian constitution provides for prohibition of discrimination which identifies women, children, scheduled caste, scheduled tribe and socially and educationally backward classes. This constitutional provision is considered as an affirmative action or a provision of positive discrimination is of vital importance to understand the intension of the constitution regarding weaker sections. From this perspective welfare of weaker section can be understood. A bare reading of Article 47 of the Constitution also indicates that scheduled caste and scheduled tribe are viewed by the constitution as weaker sections. The welfare of this segment of the society is conceived in policy frameworks of the central and state government. There are several schemes in operation in this regard. From statutory point of view laws like the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act provides for special protection.

Besides, the Orissa Schedule Areas Transfer of Immovable Property (by Schedule Tribes) Act, 1956 provides for control and check the transfers of immoveable property by the schedule tribes in the schedule areas of the State of Orissa. Under this law, any transfer of immoveable property by member of a ST shall be absolutely null and void unless such transfer is made to another member of ST or such property is mortgaged in any public financial institution for securing loan for any agriculture purpose. Gram Panchyats have authority to provide information to the competent authority where the transfer of immoveable property belonging to ST is illegally made or where any immoveable property of a ST member is



unauthorizedly occupied by way of trespass or otherwise. In case of former, it is mandatory on the part of *competent authority*⁷² to obtain prior approval of the concerned gram panchayat if he decides to settle the said property with any person other than a person belonging to schedule tribe in accordance with the Orissa Land Settlement Act, 1962. In case of latter, the competent authority shall make report to the concerned gram panchayat about the order of ejection passed in respect of any person on unauthorized occupation of any immovable property.

28. Public distribution system.

Public Distribution system comes under the obligatory function of Panchayat. The Orissa Public Distribution System (Control) Order, 2002 has been made for distribution of essential commodities to the ration card holders such as rice, wheat, sugar, edible oil, Kerosene, and such other commodities as are notified by the Central govt under clause (a) section 2 of the Act through a distribution system approved by the Central or State govt. It says to furnish copies of specified documents namely ration card register, stock register, sale register to Gram Panchayat, Municipality/NAC or Vigilance Committee or any other body authorized by the State Govt for the purpose (Section 8 (IV)). Furnish accounts of actual distribution of

⁷² Competent Authority means the Collector and includes any other officer or officers appointed by the state government.



essential commodities during the month and the balance stock at the end of the month to the Civil Supplies Officer with a copy to the Gram Panchayat, Municipality, as the case may be {Section 8 (VI)}.

29. Maintenance of Community Assets.

At the village community level various types of assets exists. These assets are tangible and in the nature of tools and infrastructures created by private and public authorities. In many cases Panchayat has its own assets like the Panchayat building, godowns, library and office infrastructures. The Panchayat being a constitutional and legal entity is empowered to own and have interest in these assets which belong to it. However, the assets created under different schemes and by other public authorities or state and central government can only be maintained by Panchayat only when it is vested in them by way of transfer, authority or vesting. It therefore depends on the nature of assets and the owner of such assets to legally authorise Panchayat to maintain its assets being transferred or being the trustee of it. The laws relating to Grama Panchayat in Orissa authorises the Grama Panchayats, Panchayat Samiti and Zilla Parishad to undertake maintenance of community assets.

