

**PANCHAYAT RAJ AND WATER RESORUCES MANAGEMENT IN INDIA:**  
**LAW AND POLICY**

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*Abstract*

The consideration of the role of local political institutions in irrigation management in India assumes importance in the light of India's historical traditions as well as in the interest of current and future governance of water resources in India. Studies show that two characteristics of India's political and economic history have endured through the millennial changes that have taken place. One is the tradition of localized governance, which could not be erased completely even by colonial rule. The other is the association of local institutions in the functions of creation and management of water technologies to serve agrarian economy. This is evidenced by a myriad of traditional water technologies extant across the country, mostly managed by local institutions. What requires to be done therefore is to review the current role of local institutions with respect to governance of water resources in the light of their historical traditions in order to assess their relevance and scope for underwriting future political and economic development in India. This paper attempts to do so.

In the introductory part, the conceptual framework in which the governance of water resources is viewed in the paper is presented – in the context of the specific climatic and physical characteristics of the country, a decentralized and integrated resource management approach is a necessity for the management of water resources. While traditional water technologies indicate that such an approach was followed in the past, these traditions were supplanted by the centralized and divisive approach that was initiated under colonial rule and continued after Independence. At present, any attempt at local governance of water resources through institutions such as the Panchayats has to confront a formidable framework of laws, institutions and processes engaged in land and water management in a centralized manner.

The next part assesses the post-Constitutional policy and legal framework on Irrigation Management and Local Government, in terms of its continuity or otherwise, with colonial policies. Here the 73<sup>rd</sup> Constitutional Amendment Act on Panchayat Raj is analyzed in detail, to assess the extent to which it represents a watershed in terms of re-enabling local

political control over land and water resources. In this context, the statutory provisions on irrigation and panchayat institutions in selected States in India are reviewed to assess the scope provided to PRIs to control and manage land and water resources in conformity with the spirit of Constitutional provisions. In conjunction, recent policy trends at national and regional levels, engendered by the involvement of multi-national institutions in the water resources and other sectors, are discussed in terms of their impact on local institutional dynamics, on sustainable and equitable natural resource management, and their implications on PRIs.

In conclusion, some suggestions for policy and legal reform critical for a holistic and decentralized approach for sustainable and equitable use and management of water resources for the rural economy are presented.

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## 1.0 INTRODUCTION.

The consideration of the role of local political institutions in irrigation management in India assumes importance in the light of India's historical traditions. Studies show that two characteristics of India's political and economic history have endured through the millennial changes that have taken place. One is the tradition of localized governance, which could not be erased completely even by colonial rule. The other is the association of local institutions in the function of creation and management of water technologies to serve agrarian economy. What requires to be done therefore is to review the impact of changing policy and legal frameworks on these traditions and to assess their relevance and scope for underwriting future political and economic development in India.

This paper reviews, from a historical as well as current perspective, the law relating to water resources in India to assess the extent to which they empower local political institutions to undertake decentralized and integrated water resources management.

The primary concern animating current approaches to water resources management in India, as much as world wide, is achieving sustainable and equitable management of the resource. The U.N. Declaration on the Right to Development recognizes equitable access to basic resources as inherent to the right to development, which is a common right of mankind<sup>1</sup>. In holding up the goal of "sustainable development", the global declaration makes the right to equitable access to basic resources a right not only of present society but also of future generations. In predominantly agrarian societies such as India, sustainable and equitable management of water and other natural resources are to be viewed as an obligatory component of national economic and social development.

The appropriateness of national policies, implementing mechanisms and strategies for water resources management in India has been the subject of wide and intense debate in the country for several decades. Two issues of importance have been churned up by this debate on the acute water related crises experienced in the different parts of the country.

The first is the relevance of an integrated natural resource management approach that may be more successful in augmentation, conservation, protection and management of water resources. There is no gainsaying the fact that integrated natural resources management is not a matter of choice, but of necessity in India. The reasons are simple

Agricultural production in India, which constitutes the mainstay of the largest proportion of the country's population, is entirely dependent on the monsoon rainfall pattern. This pattern is characteristic of this region and entirely different from middle latitude countries of Europe, from where most of our modern technologies and developmental models have been borrowed. The significant features of the monsoon rainfall patterns are that most of the country receives rain for about 100 hours each year, half of which is received in only

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<sup>1</sup> U.N. Declaration on the Right to Development, 1986, Art 8(1)

20 hours<sup>2</sup>. Since very little precipitation in India is in the form of snow, harvesting rainwater when it falls and where it falls is critical to sustain not only agriculture, but a whole range of life-supporting systems and activities. Such rainwater harvesting requires to be undertaken, not in selected places, but across the country, in every locale that supports human life. Taking into account the highly varied climatic, topographical, geological and ecological characteristics of the different regions in India, harvesting of rainwater through surface or underground storages necessarily requires combined land and water management. Traditional water technologies in India offer a proof of this principle. They reveal that people in each region had devised systems for water harvesting that suited the particular physical and social characteristics of that region<sup>3</sup>.

Not only in the past, but even at present, it has been widely acknowledged by development stakeholders [though perhaps not adequately acted upon], that the hitherto 'sectoral' approaches to resource management can no more be continued without running the risk of further degradation of the natural resource base. In recognition of this irrefutable fact, the 'watershed development' approach has been adopted by national and state governments, international agencies, as well as in the non-government sector since at least the 1980's. However, integrated natural resource management is still at the level of experimentation, though the scale of experimentation is widening across the country, as watershed development approaches are slowly consolidating.

For the same reason that integrated resource management approaches are required – variability in physical characteristics such as climate, topography, etc.- a decentralized approach is also needed. Centralized planning and implementation by the State over the last several decades has tended to impose uniformity in approach where diversity is required. Centralization has also tended to exclude the participation of local communities and institutions and with them the acute knowledge and skills that have developed through long association with local conditions.

Current problems associated with water resources in India may be perceived to be the direct result of the failure or neglect to follow an integrated and decentralized approach to natural resources use and management, not only since Independence, but for least a hundred and fifty years, since centralized administration of resources commenced under colonial rule. The obsession with large-scale irrigation projects in the country since 1951<sup>4</sup> prevented the adoption of scientific and ecologically viable methods of water management, such as river diversions, reduction of run-off losses and conservation of ground water resources over the larger part of the country.<sup>5</sup> Water regime disturbances – such as exhaustion or salinity of groundwater aquifers<sup>6</sup>, pollution of groundwater, erosion

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<sup>2</sup> Pisharoty, P.R., 1990, cited in "Dying Wisdom – Rise, Fall and Potential of India's Traditional Water Harvesting Systems", Ed. by Anil Agarwal & Sunita Narain, Centre for Science and Environment, New Delhi 1997, p.315.

<sup>3</sup> Anil Agarwal & Sunita Narain Ed, "Dying Wisdom – Rise, Fall and Potential of India's Traditional Water Harvesting Systems", Centre for Science and Environment, New Delhi 1997, p.315.

<sup>4</sup> See Annexure II for relative investments in Major/medium and minor irrigation and the respective potentials created.

<sup>5</sup> Leelakrishnan, P., "Environment Law in India", Butterworths India, Reprint 2000, p.71

of top soil, loss of soil moisture and fertility, consequent desertification and increase in the rates of floods and droughts etc. – may be attributed to such policies as well.

These misguided and unsustainable policies on water resources have been bolstered by a legal framework that is equally inappropriate. It emanates from a colonial past, distinct in its divisive character, emphatic on exploitation and development to the detriment of management, and provides for a monopolistic and centralized role for the State. As a corollary, local political institutions have consistently been effectively excluded.

As stated earlier, the association of local political institutions with water resources management is not a new one. Many of the traditional water technologies that abound in India are small in scale, and thereby amenable to local management. The emphasis in Government policy on large scale water storage and distribution systems [both major and medium size] combined with the State's monopoly legal control over water resources has engendered an equally large-scale bureaucracy for the management of the resource. It is only with respect to "minor" systems<sup>7</sup> that Government in India has considered a management regime that is not dominated solely by state bureaucracy, but which could include a role for local political institutions such as the Panchayats. However, even here, as we shall see later in the paper, government control is by no means absent.

While the law on water resources in India deals with all types of sources and systems, the law on Panchayats has, prior to and since Independence, excluded large scale sources as well as systems from its purview<sup>8</sup>.

Water law is to be found not only in the form of Irrigation Acts but in a host of other statutes on land, forest and water. These include Land Revenue Codes or Acts, Land Improvement Acts, Soil Conservation Acts, Land Development Acts, Forest Act, Irrigation Acts, Acts for Water Supply and Sewerage, Ground water regulation Acts, laws on mining, etc.

The role of Panchayat Institutions in water resources management needs to be viewed in the background of this general law on water and other natural resources.

## **2.0 POST CONSTITUTIONAL LEGAL FRAMEWORK ON WATER RESOURCES – SCOPE FOR DECENTRALIZATION.**

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<sup>6</sup> Both in terms of salt water intrusion into groundwater reserves in coastal areas, and increase in residual salts due to over exploitation of inland groundwater.

<sup>7</sup> These include not only minor irrigation systems, serving both individual as well as group beneficiaries constructed by the State, but also 'traditional' water systems inherited by the State from pre-modern times.

<sup>8</sup> Vani M.S., "Role of Panchayat Institutions in Irrigation Management: Law and Policy", Indian Law Institute, 1992.

## 2.1 Statutory Panchayat Institutions

Local government institutions have always existed in India in one form or another since ancient times. The present form of local government owes its genesis to the British rule. The role envisaged initially for them was mainly of a civic nature – maintaining health and sanitation, promoting education, and “minor matters of village importance”<sup>9</sup> When initial efforts at encouraging local bodies failed, the Royal Commission on Decentralization of 1909, recognizing the inadequacy of its approach, suggested a broadening of the functions of these bodies. The remarks of the Commission on the history and subsequent fate of local institutions are significant. Commenting on the difficulties in constituting and developing village Panchayats, the Commission observed:

“The Indian villages formerly possessed a large degree of local autonomy, since the native dynasties and their local representatives did not, as a rule, concern themselves with the individual landholder as responsible for the payment of the Government revenues, and the maintenance of the local order. This autonomy has now disappeared owing to the establishment of local civil and criminal courts, the present revenue and police organization, the increase of communications, the growth of individualism, and the operation of the individual raiyatwari system, which is extending even in the north of India. Nevertheless, the village remains the first unit of administration; the principal village functionaries – the headman, the accountant and *the village waterman* –are largely utilized and paid by Government, and there is still a certain amount of common village feeling and interests.”<sup>10</sup> (*emphasis added*)

The Commission further remarked that it “did not think it possible, even if it were expedient, to restore the ancient village system under which the community was responsible for each of its members: and that “it is most desirable alike in the interests of decentralization and in order to associate the people with the local tasks of the administration, that an attempt should be made to constitute and develop village Panchayats for the administration of local village affairs”. The suggestions made by the Commission as to the powers and functions to be devolved indicate a paternalistic devaluation of the potential of local institutions, discounting their historical traditions of “local autonomy”. These functions were:-

- Civil and criminal jurisdiction in petty matters.
- Construction and repair of local minor works such as wells and drinking water tanks, the cleaning of village roads and of buildings such as rest houses.
- Construction and maintenance of village school houses; “some local control” over village schools in such matters as village attendance, holidays, prizes, and subject to general rules, the exemption of poor children from school fees could also be “allowed”.

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<sup>9</sup> The Madras Local Self Government Committee, following the recommendations of the Local Self-Government Committee of 1882.

<sup>10</sup> Report of the Royal Commission on Decentralization in India, London 1909, p.237.

- The management of small fuel and fodder reserves ‘in conformity with a few simple and essential rules’.
- Control of village pounds and markets, distribution of lump remissions of revenue or loans to agriculturists; *with the distribution of irrigation water*; location of sites of liquor shops, and local administration of famine relief or of measures to combat epidemic disease.

Regarding the last suggestions, the Commission remarked, ”We think that the management of the village cattle pound and of a market which is of purely local importance might be *safely* handed over to these bodies. As regards matters appertaining to revenue, agricultural loans or the distribution of irrigation water, while we do not say that these should always remain outside the scope of the Panchayats duties, we think that the village councils will at the outset be fully employed in the discharge of the functions we have already suggested for them. A Panchayat which is working efficiently would, however, be an obvious and useful auxiliary in regard to measures against famine or epidemics” (*emphasis added*). The suggestion that Panchayats should be vested with the simple duty of distribution of irrigation water was thus worded with caution. The Commission was against vesting in the Panchayats any power to raise new forms of local taxation. It suggested as resources of local bodies, a portion of the land cess, special grants from particular objects and receipts from cattle and markets.

In May 1915, the Government of India issued a cautiously worded policy suggesting the formation of experimental Panchayats.<sup>11</sup> The Resolution commented on the Royal Commission’s recognition that any policy of establishing Panchayats would be ‘the work of many years, would require great care and discretion and much patience and judicious discrimination between the circumstances of different villages’. “The Government of India”, the Resolution stated, “are content to leave the matter in the hands of local Governments and administrations”.

After Independence, the Government of India was content to follow the policy and strategies of a colonial power in the matter of dis-empowering its own citizens.

## 2.2 Local Government

Power to legislate for local government which includes village administration rests with the States by virtue of entry 5, List II of the Seventh Schedule; the provision is verbatim similar to entry 13 of the Provincial Legislative List of the Government of India Act 1935.

Under Article 40, the Directive Principles of State Policy of the Constitution imposes a duty on States to establish Panchayat Raj. According to the Article:

“The State shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

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<sup>11</sup> Indian Local Self Government Policy, Government of India, Calcutta 1915



Almost all States in India have Panchayat Acts on their statute books. Legislation for Panchayats had nearly a three decade history before Independence, having been enacted by Provincial Governments in the second decade of the century and continued with some modifications after the Constitution of India was adopted. So Article 40 does not confer any new duties on States or novel protection of village institutions. As the Directive Principles are non-justiciable, there has been no opportunity for judicial review and interpretation of the “powers and authority as may be necessary to enable them to function as units of self government”.

With such a review, the acknowledgement of Panchayat Institutions’ control over land and water resources as necessary for their function as ‘units of self government’ might have emerged.

Directives 39 (a ), (b) and (c) state that the State shall in particular direct its policy towards securing that the citizens have the right to an adequate means of livelihood and that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

If Article 40 of the Constitution on Panchayat Raj was to be taken seriously, the Union and the States cannot be held to be the sole or best repositories of power over land and water resources. A review of land and water laws of the country in the light of Article 40 and Article 39 (a), (b), and (c) would reveal that they are inherently anti-panchayat, and thereby violative of the Constitution. Land and water legislation that are now in force were enacted by a colonial government committed to centralized administrative control. Whatever new legislative changes were made after Independence, were made on the same principles. The Constitution, moreover, as it stands today, holds no scope for change in such laws. This is primarily because of the position accorded to village Panchayats in the structure of the Constitution. The makers of the Constitution made a deliberate and conscious choice against a system of indirectly elected government, advocated by Mahatma Gandhi<sup>12</sup>, which would have given Panchayats an entirely different status. The Congress Experts Committee with Nehru as its Chairman, prepared the Objectives Resolution which formed the basis of the debate in the Constituent Assembly on 9 December 1946, which determined the structure of the Constitution as a loose federation based on parliamentary government. The Resolution made no mention of Panchayats or indirect government. In the debate on the resolution there was neither criticism of the omission of Panchayat government nor was the subject mentioned.<sup>13</sup> Three Committees which worked over the next seven months discussing the principles on which the Constitution was to be based, and preparing model constitutions made no mention of a Gandhian Constitution, or of Panchayat or indirect government. In later sessions of the Constituent Assembly, only one member raised the issue, arguing that the greatest measure of power should vest in village republics, and then in the provinces, and

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<sup>12</sup> Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, 33, OUP, 1972.

<sup>13</sup> Ibid.

then in the centre <sup>14</sup>. However, when the Draft Constitution was prepared, the word Panchayat did not once appear in it. In subsequent debates on the Draft Constitution, members who criticized the Draft for not giving Panchayats their due place did not attempt to put forward an alternative constitutional philosophy, since their objections were more against administrative centralization rather than political centralization. Writing into the Directive Principles of State Policy that it was the State's duty to foster development of Panchayats was considered a *via media* retaining the centralized direct constitution as well as Panchayats. Even this was "grudgingly" conceded by the Assembly leadership under "strong pressure" (to include an Article in the Directive Principles). <sup>15</sup>

Given this precarious birth, and ineffective status in the Constitution, Panchayat institutions could not be hoped to be vested with such an important power as the control of water resources.

### *2.3 Constitutional Position on Water Resources.*

The provisions on water resources administration in the Constitution of India draws inspiration from colonial legislation - the Government of India Act, 1935 – in which legislative competence was wholly within the sphere of the Provincial Legislature. Entry 19 of the Provincial Legislative List reads:

“water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power”

Post-Independence, under the constitutional division of legislative power between the Union and the States, the responsibility for the development of water resources rests with the States. The States are given legislative competence through entry 17 of List II of the Seventh Schedule which is as follows:

“Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of entry 56 of List I”

The Union is given power under entry 56 of List I for the regulation and development of interstate rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by parliamentary legislation to be expedient in the public interest; Article 252 of the Constitution also has a bearing on the matter.

Under this article, if the legislatures of two or more States desire that any of the matters with respect to which Parliament has no power to make laws for the States, be regulated in such states by Parliament and if resolutions to that effect are passed by all the Houses of the legislatures of those States, it is lawful for Parliament to pass such legislation. Such a law applies only to states whose legislatures make the request or subsequently adopt the

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<sup>14</sup> Ibid

<sup>15</sup> Ibid.

law <sup>16</sup>. Thus States under the Constitution of India have legislative competence regarding irrigation matters arising within the states and also between States.

In consonance with the Constitutional position on water resources, at the policy level, it was officially decided to exclude Panchayat Institutions in the matter of control and management of irrigation as well, with the State prepared to transfer no more than simple duties such as distributing water from field to field, a task that farmers were anyway fulfilling ever since they commenced the practice of irrigated agriculture<sup>17</sup>.

#### *2.4 Constitutional Amendments on Panchayat Raj*

The 73<sup>rd</sup> and 74th Constitutional Amendment Acts were the first attempt to give a new constitutional status to Panchayats since the adoption of the Constitution. The operative features of the Amendments are as follows.

##### Panchayats.

1. The Constitution mandates the formation of a three-tier Panchayat system in every State, whose members are to be directly elected.
2. Mandatory provisions have been made for the tenure of Panchayats, their composition, reservation of seats for specific groups, disqualification of membership, constitution of Finance Commissions in every State for recommending financial structures for local bodies, etc.

### **3. There are no mandatory provisions for powers to be devolved on Panchayats.**

The provisions in regard to this aspect are:

- The Legislatures of States *may* endow Panchayats with powers.
- Such endowing is subject to the provisions of the Constitution (i.e. existing distribution of legislative powers).
- The Panchayats *may* be endowed with such powers as may enable them to function as institutions of self-government.
- Such law *may* contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein.
- The devolution of powers *may* be with respect to:
  - a) the preparation of plans for economic development and social justice.
  - b) The implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule.
- c) Levy, collect and appropriate taxes, duties, tolls and fees as the State may determine subject to such conditions as it may consider appropriate.**

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<sup>16</sup> In the Government of India Act 1935, there is no entry corresponding to entry 56 of List 1; Article 252 of the Indian Constitution repeats the provisions of section 100 of the earlier Act of 1935; sections 130-135 of that Act correspond to Articles 262 and 263 relating to the settlement of interstate water disputes.

<sup>17</sup> The Minor Irrigation Committee, Ministry of Food and Agriculture, 1955; the First National Subject Matter Seminar on Agriculture, Animal Husbandry etc., Srinagar, October 1957; Regional Minor Irrigation Conference, Hyderabad, July 1958. For details, see M.S.Vani, *supra* note 7.

Of the 29 matters listed in the Eleventh Schedule, as many as 14 are relevant to natural resources management, with implications for water resources

In summary, except for the mandatory constitution and periodic election of Panchayat institutions, the 73<sup>rd</sup> Amendment Act does not devolve any special or new powers on these bodies outside the overall authority of the State and Central Governments. The matters listed in the Eleventh Schedule for the functioning of the Panchayats do not imply that any new powers have been Constitutionally devolved on them. The list is merely advisory in nature. Whether or not States devolve powers, and to what extent is entirely a matter of the State's choice, enabled by the legislative powers conferred on the States by the Constitution. Whatever powers or functions are devolved, will be subject to provisions in existing enactments. This implies that powers of local bodies to manage water and other natural resources will be subsidiary to those of the States, and by corollary, the Central Government.

The position of Municipalities after the 74<sup>th</sup> Constitutional Amendment is exactly identical to that of Panchayats in the Constitution. A half of the total 18 matters listed in the Twelfth Schedule relate to natural resources use and management.

The Constitutional Amendments on Local Governing Bodies therefore do not create any new dispensation that would enable a pluralistic, decentralized governance of resources. This is evident from the fact that the legislative powers of the Centre and the States remained unchanged.

Articles 246, 248-254 spell out the respective legislative fields of Parliament and State Legislatures contained in List I, II & III in the Seventh Schedule. Parliament has exclusive power to legislate on matters listed in List I, the States have similar powers over matters in List II, while List III is the Concurrent List relating to matters over which both States and Parliament may legislate. Parliament has been vested with residuary powers to legislate on any matter not included in the State or Concurrent List. Laws made by Parliament under List I and List III are also declared to prevail over Laws made by the States on similar subjects.

Viewed from an integrated resource management perspective, the Union Government and the State Governments together or separately exercise monopoly legislative powers over the following subjects.

*Table –1 Scope of Powers of Union/States*

<b>Control over Basic Resources.</b>	<b>Control over Products of Resources</b>	<b>Administrative/Judicial Powers.</b>
Mines and Minerals.	Fishing and Fisheries beyond Territorial Waters	Treaties, Agreements and Conventions.
Forests.	Fisheries (Inland, and within territorial waters.)	Land Revenue, Taxes of Agricultural Income, taxes on minerals
Water Resources	Electricity	Trade; Commerce; Production, Supply & Distribution of goods.
Land Resources.	River Valley Development	Local Government.
Protection of Wild Animals and Birds.	Shipping and Navigation in inland waterways.	Regulatory powers on these subjects
	Pilgrimages	Judicial powers
	Pounds and Cattle trespass	Acquisitioning and Requisitioning of property.
	Industries	Economic and Social planning

From the above table, it is evident that legislative powers with regard to the use and management of natural resources are distributed between the Union and the States. The States have more legislative powers over land and water resources (inland). Forest resources are in the Concurrent List, with however, Parliament holding superior powers of legislation. Financial, judicial and other administrative powers are also distributed accordingly.

In effect, this means that institutions below State level – district, intermediate or Panchayat level – do not hold independent powers of control over natural resources. They may exercise only such powers as may be delegated to them. No State in India has adopted the “watershed approach” as the exclusive development model, particularly in rural areas. Nowhere in India has “empowerment” in totality over natural resources descended below the State level. These two factors continuously militate against the possibilities of decentralized and sustainable management of water and other natural resources.

### *2.5 Other Disabling Laws.*

Integrated resource management in India has not only been deprived of enabling legislation to strengthen, protect and promote pluralistic institutional mechanisms, but has been assailed by a host of disabling laws. These have prevented the development of technological, environmental, social, economic and political arrangements that could promote decentralized management of natural resources. Almost all States have on their statute books statutes such as Land Reform laws, Land Revenue Codes or Acts, Land

Improvement Acts, Soil Conservation Acts, Tenancy laws, Land Development Acts, Forest Act, Irrigation Acts, etc.

Some common features of these statutes for instance, are:

- None of the natural resources statutes have the avowed objective of managing natural resources sustainably. They are mostly designed for the optimum exploitation of resources. Regulatory provisions in these statutes are linked to same purpose of resource exploitation. This underlies the lack of necessity felt for integrated resource management approach and decentralized management frameworks.
- Powers of control of all land resources are vested in the State, with statutory authorities vested with all powers necessary for administration of land resources<sup>18</sup>. Participatory institutional frameworks for the administration of land resources do not feature in any of the land laws. District –level panchayat institutions have, in some states been conferred with administrative powers over land resources. However this has been done within the rubric of existing land laws, which do not reflect an ‘integrated natural resource management’ perspective, and which retain the residual powers of the State Governments over the resource.
- Rights of control over all water sources are vested in government – at the State level – through Land Revenue Acts or Irrigation Acts. These sources usually include rivers, streams, nalas, lakes and tanks, and all canals and water courses and all standing and flowing water<sup>19</sup>.
- Individual rights to land are recognized, subject to the payment of land revenue. This is based on the assumption by the State of the role of “supreme landlord”. This concept forms the foundation of centralized empowerment of the State over all land resources. As a corollary, ‘common *property* rights’ are not legally recognized. However, individual and community *usufructury* rights are recognized in common lands, or water bodies. However, such rights are perceived in isolation, with no concomitant local powers of management, or duties of conservation, which are inalienable components of powers of control over land resources.
- The powers of defining and administration of rights are vested centrally. Land Revenue, water tax, Lease or licence fees, fines or penalties are collected by the State from each individual. Thus, while community irrigation systems<sup>20</sup> in fact allocate customary rights among right-holders in consonance with duties to maintain and operate such systems, the same rights are “legally” recognized, or conferred by the State, on an individual basis, divorced both from community management systems, as well as any legal “duties “ to maintain such systems.

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<sup>18</sup> Illustratively, the Maharashtra Land Revenue Code 1966, Madhya Pradesh Land Revenue Code, 1959, Orissa Prevention of Land Encroachment Act, 1972, Maharashtra Land Improvement Schemes Act 1942,

<sup>19</sup> the Maharashtra Land Revenue Code 1966, Madhya Pradesh Land Revenue Code, 1959, Orissa Prevention of Land Encroachment Act, 1972, Maharashtra Land Improvement Schemes Act 1942, Madras Land Encroachment Act, 1905. Kumaun and Garhwal Water [Collection, Retention and Distribution]Act, 1975, to name a few.

<sup>20</sup> First inventoried by the Government of India through the quinquennial Minor Irrigation Census started in 1985.

- Property laws enable inheritance or transfer of resource rights. However, such rights have not been made subject to the sustainable use of the resource. Norms of sustainability of resource use may only be defined at a local level, on scientific assessments of resource availability and demand. The antiquated resource legislations that are in force do not provide for any such management models. Legal rights, therefore are totally abstracted from sustainable management practices.
- Existing laws on forests, land resources, irrigation, drinking water supply, soil and water conservation, fisheries etc, have constituted “line agencies” with monopolistic powers of control and management of natural resources. This has promoted bureaucratic methods of functioning, which are inappropriate, where more participatory frameworks are required. The monopoly powers of control over water, land and forest resources vested on government prevents public participation in governance. These statutes do not provide for a broad-based institutional framework that offers scope for a spectrum of stakeholders to participate in planning, construction, operation and management of systems based on these resources.<sup>21</sup> Programme strategies devised by external agencies/non-government organizations in partnership with government, which introduce participatory institutional mechanisms, almost always do so on the strength of executive orders rather than statutory reform. These serve the purposes of specific programmes, without offering any guarantee of sustainability beyond the project period. In a few cases, where statutory amendments are made, their operation is limited to the specific project-jurisdictional areas, with no guarantees of replicability. More importantly, the role of the State is not modified in any significant way. This legal regime prevents the emergence and sustenance of local legal frameworks that can support more democratized governance of natural resources.
- In most States, natural resource laws, by conferring monopoly legal powers on government to collect and utilize revenue from land, water and forest resources have deprived local bodies of the important power of taxation.
- Decentralized and informal dispute resolving processes have been marginalized by the operation of formal State Judicial Institutions. This is enabled by the monopolistic powers of the Central and State Governments of the administration of justice.

In conclusion, it may be stated that the provisions of the Indian Constitution as well as a plethora of State and Central laws on natural resources in India are antithetical to decentralized, participatory, equitable and sustainable management of natural resources including water.

The role of Panchayat Institutions in water resources management has thus to be reviewed in the backdrop of the inadequate Constitutional backing and adverse state and central legislation on land and water resources.

## *2.6 Panchayat Legislation*

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<sup>21</sup> Some recent attempts – such as participatory irrigation management, joint forest management, etc, which are backed by legislative measures or executive orders merely transfer maintenance responsibilities, without in any way devolving powers in a holistic manner for integrated management of resources.

The Panchayat legislation of a few states are reviewed below to illustrate the weak position of Panchayats in water resources administration.

### *2.61 Madhya Pradesh*

The experience of Madhya Pradesh is important in the light of that State's recent efforts for the development and management of water resources through an integrated approach.

Watershed Development, as a major and new approach to rural development, was initiated by the Madhya Pradesh Government in 1994-95. Its significance lies in the fact that the programme was introduced in as many as 459 blocks in all 45 districts in the State, and is the largest programme of its kind addressing the critical task of soil and water conservation and watershed development in any single State in the country.

A significant aspect of the programme that underlies the Mission's profile is the establishment of a community-level four-tier institutional framework that includes Watershed Committees, User Groups, Self-Help Groups, and Women's Thrift and Credit Societies. In this context, the role of PRIs in Madhya Pradesh merits a closer look.

The basic law on land and water resources is to be found in the Revenue and Irrigation law in Madhya Pradesh. Together, these statutes vest State agencies with powers of control and regulation over land and water resources. In summary, state revenue and irrigation authorities exercise the following powers in relation to land and water. To the extent that powers are vested in these agencies, they remain out of the purview of PRIs unless specific orders are issued delegating or devolving such powers.

- Title in all lands vest in the Government<sup>22</sup> All lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the subsoil of any land are the property of the State Government.<sup>23</sup>
- The title to all minerals, mines and quarries and all powers necessary for the proper enjoyment of such rights also vests in the State Government by virtue of section 247. This includes the right of access to land for the purpose of **mining** and quarrying. It also includes the right to occupy such other land as may be necessary for purposes subsidiary thereto.
- Powers to set apart unoccupied land in the village for the purpose of enabling the exercise of nistar rights, including irrigation and water rights; The Madhya Pradesh Land Revenue Code further provides that land so set apart for nistar rights may not be diverted for other purposes without the sanction of the Collector. The rules in this respect provide that such a diversion can take place only on the instance of the Gram Panchayat, acting on a resolution of the Gram Sabha [which, however, occurs rarely].

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<sup>22</sup> Sec.57 M.P. LR Code

<sup>23</sup> However, any rights of any person subsisting at the coming into force of the Code in any such property have been saved.



- Preparation of Record of Rights for every village. The record-of-rights pertains to land and water rights of every landholder.
- Defining Village Boundaries and Grouping of Villages on the basis of physical features, agricultural and economic conditions and trade facilities and communications.
- Dividing or uniting villages or excluding area therefrom.
- Settling disputes regarding Boundaries between villages, survey numbers and plot numbers.
- Imposing penalties or eject persons for unauthorisedly taking possession of land.
- Prohibiting or Regulating the Cutting of Trees, where the cutting of such trees is detrimental to public interest or where it is necessary to prevent erosion of soil and to protect water courses such as streams, rivers, rivulets and *nallas*. The prohibition would apply whether the trees stand on land belonging to Bhumiswami or to the State Government.
- Managing Forest Land under the control of the Revenue Department and regulating felling and removal of forest growth.
- Preventing theft of Felling and Removal of Timber in Villages adjoining Government Forests.
- Regulating Fishing, Hunting and Removal of any materials belonging to the State Government. Rule framed under the Revenue Code in 1960<sup>24</sup> permitted Local Bodies, Municipal Committees, Janapada Sabhas, Mandal Panchayats, etc. or any other Department of Government other than the Revenue Department, who hold fishing rights in tanks borne on the books and managed by such bodies, to lease out such fishing rights according to the provisions laid down in the Rules. The Rules mandated that, where any Government tanks is proposed to be leased out for fishery purposes, a Gram Panchayat or Gram Sabha shall be consulted by the Tahsildar before leasing any tank, and their opinion should be given due weight in deciding. There is no information, however, as to how far these rights were exercised by PRIs. In any case, the activation of these provisions has to occur under orders issued under the provisions of the Panchayat Act, which until recently were not done.
- Removal of Obstruction to Common Assets
- Permitting diversion of agricultural land for non-agricultural purposes. Rules have been framed under the section for the diversion of land for building purposes, setting out procedures for application. Two notable provisions in the rules, in addition to the procedures to be followed are:
  - I. Consultation with local authorities, within whose limits the land is situated, is provided for to ascertain its objections, if any to the diversion of land. However, the sanction of the plan for diversion is not made conditional on

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<sup>24</sup> Rules issued by Notification No.221-6477-VII-N (Rules) dated 6<sup>th</sup> January 1960,

the acceptance by the local authority. At best, modifications of the proposed layout may be carried out in deference to the objections of the local authorities.

- II. The Rules prohibit the permitting of diversion of use of any portion of the land which is occupied by a public road, or public tank for irrigation or any nistar purposes or is being used by the general public for any kind of nistar, *unless the road or tank thereon has ceased to exist, or the land is no longer required for any public purpose. This proviso leaves open the possibility of diverting degraded or waste or fallow lands, or dried up tanks, and their degraded catchments which may, through proper watershed development measures, be rejuvenated.*

- Reserving or Disposing Abadi [house sites] . The Collector has been given the power, under section 243, reserve further area for abadi from the unoccupied land of the village, if in his opinion, the area for abadi was insufficient. If unoccupied land was not available, the State Government may acquire land under the provisions of the Land Acquisition Act 1894. The power of disposal of sites in the abadi area has been given to the Gram Panchayat under section 244. In the absence of a Gram Panchayat, the Tahsildar was to dispose of the sites. The Gram Panchayat's power was however, subject to the rules made under this section<sup>25</sup>.

It is a fact worth noting that the powers of disposal of land for house sites is exercised not by Panchayats, but by the State Government. Over the last several decades, the unoccupied land set apart for nistar has been officially shrunk from a minimum of 10 % of the total geographical area of a revenue village to currently about 3 %. The official reason has been to provide house sites or agricultural plots to the landless. In reality, while the category of land in official records was changed, in the majority of cases, the title to these lands has not passed to the intended beneficiaries.

- All regulatory powers [imposing fines, confiscating materials etc.] with respect to regulating use of common lands and water bodies are reserved for the SDO under sec.243 of the M.P. LR Code, thereby negating the potential for local regulation.

The M. P. Irrigation Act declares the right of Government in the water of any river, natural stream or natural drainage channel, natural lake, or other natural collection of water. [sec. 26] The rights are absolute <sup>26</sup>. Powers exercised by these authorities are:-

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<sup>25</sup> Rules Regarding the Disposal of Abadi Sites. [Notification No. 220-6477-VII-N-(Rules), dated the 6<sup>th</sup> January 1960, as amended by No. 3771-582-N-Rules, dated 8-3-1960]

<sup>26</sup> No rights of any person to water can accrue to the detriment of an existing canal. No rights can be acquired against the Government under section 15 or section 16 of the Indian Easements Act, 1882, in the water of any river, natural stream or natural drainage channel, lake or other natural collection of water, any of whose waters supply a canal existing or under construction or proposed to be constructed. Even when Government supplies water from its canals, the Act bars the accrual of prescriptive rights of easement or otherwise to such supply. Water will be supplied only in accordance with the provisions of the Act which provides for periodical supply agreements or grants under specified terms and conditions. The Act declares the right of Government even over the water

- Powers to regulate rights to cut grass and wood, to graze cattle in tank beds, to fish in tanks and canals, to cultivate land in tank beds, pluck all kinds of fruits and any other produce or to do other acts on land or in water under the charge of the Irrigation Department, under lease from the Irrigation Department.
- Supplying Water from Canals to village tanks on charges of water rates.
- Construction of submergence Tanks.
- Levy and collection of water charges on canal irrigation as well from submerging tanks, ex-Malguzari tanks, regulators, pick up weirs, Bhandaras and grants-in-aid works and private irrigation work which benefit from a State canal nearby.
- The Act does provide for the constitution of *Irrigation Panchayats*: Section 62 mandates the establishment of Irrigation Panchayats for every village or chak or a group of villages. The Act prescribes the membership of the Panchayat, a representative body of the landholders, and their duties and powers. The members of the Panchayat have been declared by the Act to be Public Servants for the purposes of the Indian Penal Code. However, no Panchayats have been formed under the Irrigation Act in M.P.
- Making Rules, defining Offences and imposing Penalties. The Act confers on the State Government the exclusive power to frame rules for the implementation of the Act. Even in the case of Irrigation Panchayats, Government reserves the power to make rules for their functioning.

### Duties

Certain “Duties” of the Gram Sabha are laid down in the M.P. Land Revenue Code of 1958. The Gram Sabha under the Land Revenue Code is distinct from that defined under the Panchayat legislation. In the Code, the Gram Sabha is defined as a representative body comprising a Chairman, a Secretary and not less than three other members all of whom shall be elected. Under the Panchayat Raj Adhiniyam, on the other hand, the Gram Sabha refers to all the adult and voting members of the village.

Section 232 of the Code provides for the establishment of a Gram Sabha for the purpose of *the management of a village*.

Under the Revenue Code, the Gram Sabha has been recognized as a legal body. It has been empowered to establish and maintain a fund into which shall be paid:

- (i). All sums recovered as grazing fees and such other fees and income arising from the management of the village as the State Government shall prescribe and
- (ii). All sums contributed by the State Government or any local body or any private person.

Such funds shall be applicable to the payment of charges and expenses incidental to the several matters under the control and administration of the Gram Sabha. Wherever a

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discharged as waste after its use for the purpose for which it was supplied.

Gram Panchayat has been constituted, under the law relating to panchayats in force, the Code states that such Gram Panchayats shall perform the duties and exercise the rights of a Gram Sabha under the Revenue Code.

Section 252 of the Code places the onus on the Gram Sabha of maintaining and keeping in proper repair works of public utility in the village. Subject to the rules made under the Act, the Gram Sabha may, by order in writing call upon adult males residing in the village (except those who are old and infirm or subject to any physical disability) to perform such labour as it may specify in order to keep in a proper state of repair such works of public utility in the village, as may be notified by the State Government.

If any person is unable to perform labour as required by the Gram Sabha, he may have it performed by another on his behalf or pay for its performance. The amount to be so paid, however, was to be determined by the Tahsildar. The Tahsildar has been empowered to take action against those who neglect or refuse to perform labour or fail to pay for the performance of labour. The Tahsildar has been empowered to collect the charges as arrears of land revenue.

With the enactment of Panchayat legislation, the powers of Gram Sabha under the Revenue law should have been transferred to Gram Panchayats as the Code provides. However, this has not been done.

The watershed institutions created under the Rajiv Gandhi Watershed Mission have nothing to do with the legal management of the common lands of the village; watershed committees were involved in the management of funds allotted to watershed activities, such as construction of water harvesting structures. Their continued existence is dependent on their financial strength. After the exhaustion of the major part of the programme funds, these committees are left with a small maintenance fund, and no means or powers to raise any resources thereafter.

The nature of powers that are provided for in these statutes are in stark contrast to the superficial functions assigned to institutions that are created by policy – such as the watershed management institutions or user committees in irrigation. The range of powers exercised by the State also reveals the weakness of Panchayat Institutions. It becomes important to examine these powers to appreciate what powers local institutions do not possess for the purpose of water and land management.

*The Madhya Pradesh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhhiniyam, 1999.*

This statute was enacted as a consequence of the World Bank financed Water Resources Consolidation Project in Madhya Pradesh. The preamble to the Act states that this Act is intended to provide for Farmers' participation in the management of irrigation systems and for matters connected therewith and incidental thereto.

It is to be assumed that the enactment of a new legislation for farmers' participation was necessitated as the provisions of the earlier Act on Irrigation Panchayats was not implemented.

The main features of the Act are as follows.

- The Act applies to major, medium and minor irrigation system, excluding those which are under the control of the Panchayat for harnessing water for irrigation and other allied uses from Government /Corporation source *and includes reservoirs, open head channels, diversion systems, anicuts, lift irrigation schemes, tanks, wells and the like.*
- "Water User" is defined as meaning and including any individual or body corporate or a society using water *for agriculture, domestic, power, non-domestic, commercial, industrial or any other purpose from a government or the corporation source of irrigation.*
- The Act provides for notification of "Water Users Areas". Delineating command areas on hydraulic basis and declare it as a water users area is the prerogative of Government, but not mandatory.
- The constitution of a Water Users Association has been mandated for every water users area that is notified [which is not mandatory].
- While there may be several water user associations at different levels in major and medium schemes, under a minor scheme, a single WUA may be constituted by Government.
- The membership is to include not only irrigating farmers but all other water users in that area, as defined in Section 2.
- The District Collector has been empowered to make arrangements for the election of President of Managing Committees for every water users' area. .
- Government may at its discretion delineate and declare a distributory area comprising two or more water users associations, and a project area from every command area or part thereof., and organize elections of Committees at these levels as well.
- Government may, in accordance with the rules made in this behalf,
  - i) split up a farmers' organization to form a new one.
  - ii) Increase or diminish the area of a Farmers' Organization.
  - iii) Alter the boundaries of a Farmers' Organization.
  - iv) Cancel any notification issued under the Act for rectifying a mistake.
- Government prescribes conditions of disqualifications of candidates or members.
- Managing Committee of a farmers' organization may constitute sub-committees.
- Farmers organization to be a "body corporate with a distinct name having perpetual succession and a common seal, vested with the power of entering into contracts" etc. However, the FO shall not have the power to alienate in any manner any property vested in it.
- Farmer's organizations have been given the power to levy and collect such fee as may be prescribed by Government from time to time, for fulfilling its objectives.
- While water users are defined broadly under the Act to include all uses of water, there is no corresponding Government Authority that integrates the administration of water for all purposes. The Irrigation Department has been recognized as the main authority to implement the Act, and for all practical purposes, views WUAs as related to

irrigation only. As such, the duties or functions of the WUAs are concerned only with maintenance and operation of the irrigation system, and efficient use of water.

The objectives of the FOs under this Act are limited to use of an irrigation system, with no connection to the wider natural resource systems in the village. This explains the total absence of perspective towards catchment protection or treatment.

The Act is made applicable only to systems under the control of the Irrigation department, leaving out irrigation systems under the control of Panchayat Institutions. This constitutes a divisive approach, whereby one category of irrigation systems are covered under a particular institutional framework, while others are not. The social impact of such an approach has not been taken account of.

The functions and duties of FOs under the Act do not in any manner diminish the powers of the State in the control and management of water resources.

*M.P. Panchayat Raj Adhiniyam.*

*Powers and functions of Gram Sabha*

The exercise of powers and functions by Gram Sabha *is subject to* the rules made by the State Government and any general or special orders issued by the State Government from time to time. Of the several powers and functions prescribed under sec.7 for the Gram Sabha as many as ten out of a total of 15 are applicable to watershed development. However, no notifications have been issued to activate these provisions.

*Functions of Gram Panchayat.[ Sec. 49]*

Under the provisions of the Act prior to the Constitutional Amendment, functions of Gram Panchayat that could be described as relating to waters resources management were limited. The only provisions were those relating to water supply for domestic use and for cattle, and the management of public lands and village site. The Act further provided that Gram Panchayats could also exercise “such other functions as the State Government, Zila Panchayat or the Janapad Panchayat may, by general or special orders”, delegate.

Thus the Act made GPs dependent on the discretion of these higher bodies to delegate functions, rather than vesting sufficient functions on these bodies.

Subsequent to the Constitutional amendment, however, the guidelines laid down in the 11<sup>th</sup> Schedule of the Constitution have been followed to list the functions set apart for Gram Panchayats. However, the functioning of the Gram Panchayat in relation to these subjects *have been expressly made subject to the other provisions of the Act* and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government form time to time. *This proviso more or less retains the status quo and does not allow any departure from previous law.*

### *Powers of Panchayats.*

The powers assigned to Gram Panchayats under sec. 54 are not commensurate with the duties or functions assigned under previous sections. Out of the few powers vested in Gram Panchayats, the following may be related to water resources development.

- Maintaining water works and sources of water supply.
- To regulate the use of water. [ purpose of water use not specified]
- To ensure environmental control.

### *Functions of the Janapad Panchayat.*

Janapad Panchayats on the other hand, have been entrusted with the *duty* of making financial provision for several programmes that could be construed as related to water resources development and management, thus duplicating the envisaged role of Gram Panchayats, such as Integrated Rural Development, Agriculture, Social Forestry, Animal Husbandry, Fisheries, Communication and Public Works, Rural Employment Programmes etc.

Subsequent to the Constitutional amendment, several new functions were assigned to the Janapad Panchayat as well. These also, however, have been expressly made subject to the other provisions of the Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time.

### *Functions of Zila Panchayat*

The functions of Zila Panchayats are similar to those of the Janapad, but applicable to the district as a whole, and coordinating and supervising the lower level Panchayats. The functions of Zila Panchayats are also made subject to the other provisions of the Act and rules made thereunder and subject to policy, directions, instructions, general or special orders as may be issued by the State Government from time to time.

### *Standing Committees of Gram Panchayat Janpad Panchayat and Zila Panchayat.*

The Act confers on Gram Panchayats the power to constitute standing committees for discharging its functions and duties, as well as to vest such powers on the committees so constituted, as it deems necessary. The type of Committees to be constituted by the Gram Panchayat are not detailed or prescribed. The committees were to function under the general control of the Gram Panchayat. The Act however, places restrictions on the number of committees, membership, term of office etc<sup>27</sup>.

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<sup>27</sup> The Madhya Pradesh Gram Panchayat (Term of Office of Members of Standing Committee and Procedure for conduct of Business ) Rules, 1994 sets out rules relating to these committees.

*Standing Committees of Janpad Panchayat and Zila Panchayat.*

The nature of Committees at the Janapad and Zilla level are however, prescribed.

- ◆ Agriculture Committee
- ◆ Communication and Works Committee
- 1. Cooperation and Industries Committee

In addition to the above, the Janapad Panchayat and Zila Panchayat may with the approval of the prescribed authority, constitute one or more such committees for other matters not specified in the said sub-section. The Janapad Panchayat or Zila Panchayat may with the approval of the prescribed authority re-allocate the matters to any committee or entrust such committees any other matters not otherwise specified.

**Thus, many functions related to water resources development and management have been reserved for Janapad and Zila Panchayats rather than Gram Panchayats, provided however, the State Government devolves such functions and powers through special orders.**

*Fund and Property of Panchayat.*

As per section 62 (chapter VII) of the PR Act, only the Panchayat [and not the Gram Sabha or any other institution] as a legal and elected body can acquire property from the government on conditions and restrictions, which the Government may impose from time to time. Not only does the Government have the power to vest any property in the Panchayat, it has also the power to resume any property from the Panchayat. **Thus the Panchayats have no "security of tenure" over public property.**

Panchayat may also be assigned powers to collect taxes, tolls by the govt. subject to conditions and limits as the Government may deem fit. Panchayat may receive grant in aid from the government.

*Taxation and recovery of claims.*

The taxes that come under the purview of Panchayat Institutions are few.

- ◆ Cess in respect of land of every landholder on the land revenue or rent payable on such land.
- ◆ Extra Duty on duty payable on transfer of property within the Block.
- ◆ Schedules I, II and III list the obligatory and optional taxes of Gram and Janapad Panchayats.
- ◆ Such other taxes, duties, tolls, fees and other receipts as may be specified by the State Government.
- ◆ The Gram Panchayat may lease out, by public auction in the prescribed manner, the collection of any fee specified in Schedule III



Among the taxes set apart for Gram and Janapad Panchayats in Schedules I,II & III, only a few have some implications for water resources management. These are:-

#### *Obligatory Taxes of Gram Panchayats*

- A tax on persons exercising any profession or carrying on any trade or calling within the limits of Gram Panchayat area.
- Market fees on persons exposing goods for sale in any market or at any place or any building or structure therein, belonging to or under the control of the Gram Panchayat.
- A fee on the registration of cattle sold in any market or in any place belonging to or under the control of the Gram Panchayat.

#### *Optional Taxes and Fees of Gram Panchayat.*

- A water rate, where arrangements are made by the Gram Panchayat for regular supply of water.
- Fees for drainage where system of drainage has been introduced by the Gram Panchayat.
- A temporary tax for special works of public utility.
- Fees for grazing cattle over the grazing grounds vested in the Gram Panchayat.

#### *Lease of Collection of Fees by Gram Panchayat*

- A fee on the registration on the cattle sold in any market or place belonging to or under the control of the Gram Panchayat
- A fee for grazing cattle over the grazing grounds vested in Gram Panchayat.

#### *Delegation of Powers, including Rule Making Powers.*

Section 93 of the Act states that the State Government may, by notification, delegate to or confer on any officer subordinate to it or to any Panchayat, all or any of the powers conferred upon it, by or under this Act, except the power relating to the framing of rules.

Even the powers so delegated could only be exercised in accordance with the general or special orders of the Government. This provision effectively prevents "self-governance" of Panchayat Institutions, and retains them under the complete control of the State Government.

#### *Government Notifications [various departments] for Panchayat Raj Institutions*

The real extent of decentralization can be assessed only from notifications issued by Government, which enable the implementation of any provision of the Act. Unless such notifications specify the powers and functions to be transferred to PRIs, none of the above sections of the Act will have any force. A few such notifications are analyzed below.

An order of the Agriculture department<sup>28</sup> directs the transfer of programs relating to agriculture, horticulture and minor irrigation to Zila Panchayats. Powers to sanction minor irrigation schemes costing up to Rs 3 lacs have been given to Gram Panchayats, and between Rs 3-5 lacs, to Janapad Panchayat, and from Rs 5-10 lacs to Zilla Panchayat.

Another order of the same department<sup>29</sup> directs the transfer of Minor Tanks, water-harvesting structures, stop dams etc constructed by the department to the village panchayat. The Village Panchayat will take the responsibility of maintenance on their own and without any support from the government.

An order of the Fisheries department<sup>30</sup> dated 9 May 1997 states the following:  
Management and Development of Reservoirs shall be vested in the Panchayat bodies in the following manner –

1. Gram Panchayat – for upto 10 ha water body.
  2. Janpad Panchayat – 10 – 100 ha
  3. Jila Panchayat – 100 – 2000 ha.
- ◆ Panchayat bodies may lease out the water bodies as per rules prescribed by the Government
  - ◆ As per the policy of the govt., the following priority shall be followed in leasing out water bodies by the Jilla Panchayats –
    - a) Fishermen, STs, SCs, Cooperative Societies of the SCs.
    - b) Fishermen, STs, groups of SCs.
    - c) Fishermen, STs, any individual SC person.

An order of the PHED<sup>31</sup> states that all the Drinking Water schemes shall henceforth be maintained by the village panchayat on their own and without any financial support from the government. In a later order<sup>32</sup>, the maintenance responsibility of hand pumps *which were earlier with the Zilla Panchayats were brought back* to the PHED Department.

In summary, these orders transfer the following powers and functions to Gram Panchayats.

- ◆ Powers of Sanction only of Minor Irrigation Schemes up to Rs 3 Lacs.
- ◆ Development of Agriculture and Horticulture [without any funds or powers.]
- ◆ Duty of maintaining Minor Tanks, water-harvesting structures, stop dams etc constructed by the department and transferred to the village panchayat. [without any funds or powers]
- ◆ Leasing of fishing in water bodies of up to 10 hectare water spread [under rules prescribed by Government].

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<sup>28</sup> Agriculture Department dated 30 Oct, 1996 and 2 May, 1998

<sup>29</sup> Agriculture department dated 15 May, 1998

<sup>30</sup> Dated 9 May 1997

<sup>31</sup> PHED, dated 24 April 1997

<sup>32</sup> PHED, dated 27 April, 1998

- ◆ Maintenance of drinking water schemes [without any support from Government, but with power to levy water rate.]

The Madhya Pradesh Panchayat Raj (Sanshodhan )Adhiniyam 2001 (Madhya Pradesh Act No 3 of 2001) purports to establish gram swaraj in Madhya Pradesh. It vests the Gram Sabha with a legal status by recognizing it as a body corporate, having perpetual succession and a common seal. The functions of the Gram Sabha have been increased to 42 from about 15 in the earlier Act. The status of the Gram Sabha is no different from that of the Panchayat, remaining under the overall control of the State Government for all operational purposes. Section 7 M states that the State Government may, by general or special order, add or withdraw functions and duties entrusted to Gram Sabha when the State Government undertakes execution of any of the functions entrusted to Gram Sabha. Many of the functions and limited powers of the Panchayats are duplicated in favour of the Gram Sabha, without any provisions subjecting either the Panchayat to the Gram Sabha or the Gram Sabha to the Panchayat. Whether the Gram Sabha or the Village Panchayat will exercise the powers and functions is to be decided. The powers of taxation duplicate those devolved on the Panchayat, and are therefore not very significant in terms of management of natural resources.

**There is no devolution of powers on natural resources. The notifications of the various departments transferring some powers to Panchayats, as described above, are not affected by the new law on Gram Sabhas.**

### *2.62 Himachal Pradesh*

The H.P. Panchayats Raj Act 1994 and the H.P. Municipalities Act 1994 are the amended versions of the earlier legislations on the subject. The crucial issue in relation to these legislations is the extent of actual decentralization of powers with regard to the list of 29 subjects as directed by the constitution. A review of the provisions of the H.P. Panchayat Raj 1994 reveals that there is almost no difference between this Act and the earlier P.R. Act of 1968 with regard to powers of P.R. institutions over drinking water supply and minor irrigation. The Act of 1994 provides (as did the earlier act) that Gram Panchayats had the 'duty' to maintain and keep in good repair drinking water systems to the extent that their financial capacities permitted and to ensure distribution of water to all. Regarding Minor irrigation, they could protect, maintain and operate minor irrigation systems *provided the State Government transferred these works to the Gram Panchayat.*

Several substantive provisions of the Act vest powers on Panchayat Institutions – i.e. the powers of taxation, judicial powers (to impose sanctions such as penalties) and administrative powers (such as the power to form committees and delegate powers to such committees relating to any works, power to form Joint Committees with other Gram Panchayats to undertake works of Joint interest etc.)

However, none of these powers can be exercised by Gram Panchayats Samities or Zilla Parishad unless the works (or systems) are themselves transferred to these local bodies.

The three main operative sections relating to devolution of powers in the H.P. Panchayat Raj Act 1994 are sections 11(2) (relating to Gram Panchayat), 83 (1) (relating to

Panchayat samities) and 94 (1) relating to Zilla Parishads. These sections provide that the State Government *may*, by general or special order, entrust to the local bodies preparation of plans and implementation of schemes for economic development and social justice specified in schedule II (which lists the 29 subjects as directed by the Constitution).

A notification (No. PCH-HA (1) 12/87-10206-406 dated Shimla 31<sup>st</sup> July 1996) of the H.P. Government sets out the powers, functions and responsibilities devolved on P.R. Institutions at the village, block and District Level.

A review of this notification shows the following :

1. The Gram Panchayats are entrusted with the routine *maintenance* of Hand Pumps provided by the department; routine *maintenance* of drinking water and irrigation schemes which have been executed (by the Dept.) at a cost of one lakh and below; and identification of potential schemes within gram panchayat area.
2. The duties of Gram Panchayats include prevention and control of water pollution and giving information on the functioning and condition of water supply schemes to the prescribed authority.
3. Gram panchayats are also authorized to bring to notice of the Irrigation and Public Health Department any cases of gross mis-utilization of funds, corrupt practices etc. by the Department Staff, Contractors and sub Contractors while executing various schemes.
4. The panchayat Samities have been likewise given duties to check corruption, prevent and control waer pollution, and identify potential schemes including water harvesting covering more than one panchayat.
5. The Zila Parishads likewise may identify cases of corruption, and to identify potential schemes including water harvesting covering more than one block.

The notification shows that the State Government has devolved limited powers relating only to maintenance of schemes, and identification of new schemes. Rights of Panchayat bodies over resources have not been declared. Crucial powers of planning, execution, operation and maintenance in totality have not been devolved. The duties to maintain schemes will be limited by the extent of finances that may be made available to these bodies. To date, there are no orders of Government to transfer irrigation works.

The P.R. Institutions fall under the administrative jurisdiction of the rural Integrated Development Department. The implementation of any development works by this department (which include rural drinking water supply and minor irrigation schemes) follow the administrative and technical rules of procedure of the Department. Panchayat institutions are viewed merely as local extensions of this Department (the P.R. Act itself defines them as “agents” of Government); and any works executed in/by/through Panchayats are made subject to the procedural rules of the RID Department. These procedures relate to calling of tenders or quotations, maintaining muster roll and measurement procedures, procurement and storage of materials, maintenance of accounts audit and inspections, etc. The provisions of the Manual underwrite the financial, administrative and technical functions of the agency in planning, execution, operation and maintenance of works. There are predictably no provisions for involving Panchayat

institutions or user groups in planning, execution, operation and maintenance of drinking water and irrigation systems.

### 2.63 Orissa

As in Madhya Pradesh, the State Government is vested with a wide range of powers of control and management over land and water resources under the provisions of the Orissa Prevention of Land Encroachment Act, 1972 and the Orissa Irrigation Act of 1959.

#### *Orissa Panchayat Legislations - Provisions relating to Minor Irrigation.*

In the 73<sup>rd</sup> Constitutional Amendment Act, there are no directions about which tier of local bodies, powers relating to minor irrigation should be devolved to. The Orissa State Government, in its discretion has limited the extent of decentralization of powers only up to the district level - i.e Zilla Parishad, under whose jurisdiction have been brought very small irrigation works - with a command area of up to 23 hectares only. Control over the remaining MI works have been retained by the Water Resources Department and the Orissa Lift Irrigation Corporation.

However, under the existing legislations relating to village panchayats - i.e. the Orissa Gram Panchayat Act 1964, there is ample scope for devolution of powers relating to minor irrigation, if the State Government so wills.

These are described in brief below.

As yet, the State Government has not devolved powers and as a consequence, Irrigation has not been included in the "Obligatory Functions" of the village level Panchayats, listed under Sec.44. Some related functions under this section, however are:

#### Sec.44

(k): Protection, maintenance and development of all properties vested in or entrusted to the management of the Grama Panchayat.

(u) Preparation and execution of plans to advance agricultural conditions.

(z-4) Maintenance of community assets.

Minor Irrigation is not included under the "Discretionary Functions" of Gram Panchayats either (Sec.45).

The potential to transfer control and management of irrigation works to village panchayats is contained several section of the Act. These are detailed in Annexure I.

An important provision relates to vesting of properties in the Gram Sabha or Sasan..

The Panchayat Act specifies which of such properties vest in the Gram Sasan, and which properties may be transferred to it. However, there are several provisos to the relevant

sections, which retain the vesting of properties entirely under the discretion of the State Government.

Under Sec. 71 (1), are mentioned four types of properties (civic amenities, land and buildings) which shall vest in the Grama Sasan, provided they are not maintained by any local authority or the Central or State Government. The Government also retains power under Sec.71 (2) to remove any properties from the control of the Gram Sasan.

Sec.71 (3) provides that properties within the Grama Sasan belonging to, maintained, managed or controlled by the State Government may, by special orders issued from time to time, with such terms and conditions as the Government may think fit, vest in the Grama Sasan and be under its management, direction and control.

Under Sec.71 (4), some properties have been specifically declared to vest in the Grama Sasan, *subject however to the provisions of Sec.71 (3)*. These are:

- (a) Village Roads.
- (b) Irrigation Sources.
- (c) Ferries.
- (d) Waste Lands and Communal Lands.

Thus under the Orissa Grama Panchayat Act, while Panchayats have not been given any mandatory or discretionary powers to implement, control or manage irrigation works, irrigation sources within their limits have been vested in them. It has also not been clarified as to what type of sources village panchayats may exercise control over.

In summary, even though Village level Panchayats have not been empowered to control and manage minor irrigation systems, as was expected to be done in the spirit of the Constitution, the following existing provisions in the Orissa Grama Panchayat Act 1964 make it *possible* to devolve a significant role in the minor irrigation sector.

Sec.46.	Transfer of Duties and Powers to Grama Panchayats
Sec 47	Execution of development works by Grama Panchayat
Sec.71	Vesting of Properties in the Grama Sasan
Sec. 73 (1) & (2).	Allocation of public property to Grama Sasan
Sec 74.	Powers to acquire land.
Sec 93.	Provision for Grama Fund.
Sec.95	Power to Borrow .
Sec 109	Control and Supervision over Gram Panchayats
Sec 112.	Deputation of Officers to advise Grama Panchayats
Sec 125 & Sec 127.	Constitution of Village Committees and Joint Village Committees.
Sec.146	Settlements of disputes between different Grama Sasans and between different Grama Sasans and other local authorities.

Panchayat Samities under the Orissa Panchayat Samiti Act 1959 have not been given any role directly in minor irrigation.

Under the Orissa Zilla Parishad Act, the district level elected bodies or Zilla Parishad have been vested with the powers to undertake schemes, adopt measures including giving of financial assistance relating to the development of, among other things, minor irrigation. Like the Grama Panchayat, and unlike the Panchayat Samiti (indirectly elected members), the Zilla Parishad is declared by law to be a body corporate having a perpetual succession and a common seal. Subject to such restriction and qualification imposed under the Act, it shall have the power to acquire and hold property, both immovable and movable, to transfer any such property held by it, to enter into contracts and do all things necessary for the purposes of the Act. The constitution of various standing Committees is mandated. Among these is the Standing Committee on Agriculture, Minor Irrigation, Co-operation, Industries and allied schemes. The Act spells out the various administrative and financial powers of the Zilla Parishad.

### *2.7 Other States.*

In consonance with the national policy on the involvement of Panchayat Institutions in irrigation management made in the initial years of the Constitution, a similar situation may be found in most of the States, with perhaps the exception of the north-eastern states. Line agencies such as the Irrigation Departments, Public Works Departments, or Revenue Departments have exercised control over land and water resources, yielding very little space for local political institutions.

### *2.8 Participatory Irrigation Management*

The concept of participatory irrigation management has been experimented upon in India since the mid-seventies, as part of the Command Area Development Programmes. The primary initial focus of this strategy was the improvement of efficiency in large scale irrigation systems, to address the large gap between irrigation potential created and the potential utilized, with respect to almost all large scale projects in the country. Farmers were to be organized to undertake a range of activities to improve the efficiency of delivery of irrigation water. The institutional framework envisaged was better partnership between irrigating farmers and the line agencies, underscored by legal agreements between the partners. In this context, there was no scope for any role for Panchayat Raj Institutions.

However, it is only since the mid-nineties that it has been officially promoted actively in all the States. The National Water Policy 1987 advocated involvement of farmers in the management of irrigation to correct some fundamental problems that came to be associated with large scale projects - inequitable supply of water, especially at the tail-end of distributaries, improper operation and maintenance of the systems, poor recovery of water rates, indiscipline in the distribution of water and the problem of water logging due to seepage from canal network on the one hand and over irrigation on the other. PIM was made a thrust area under the Programme during the Ninth Five Year Plan period. The participation of farmers in the management of irrigation was expected to promote a sense

of responsibility in them for operation and maintenance and collection of water rates from the areas under the jurisdiction of the Water Users' Associations at different hydraulic levels. To the extent that these efforts pertained to large scale systems that extend over large territories there can be no scope for a role for Panchayat Institutions. This is because the overall control of the system in its entirety remains with the Government. Further, the concept of WUAs in major and medium systems is envisaged only for irrigators and does not take into account multiple uses and stakeholders in these water bodies. As such, the concept remains insufficient for the sustainable and equitable management of water resources.

A matter of concern, however, is that in recent years, the concept has been sought to be extended to minor irrigation as well. This has been concurrent with comprehensive reforms in the water sector initiated under the aegis of the new economic policy, and funded by international financial institutions such as the World Bank. High levels of investment have been made by State Governments in the minor irrigation sector, using loans acquired from the Bank. Simultaneously, statutes have been enacted in some states such as Andhra Pradesh, Madhya Pradesh, Goa, Tamilnadu, etc., Water Users' Associations have been constituted under minor irrigation systems. It is here that the potentiality for conflict between the parallel institutional frameworks exists.

Extending the concept from major irrigation systems into minor surface systems restricts the function of new institutions to irrigation management. However, in the latter type of systems, which are primarily water harvesting structures, a spectrum of benefits is derived in addition to irrigation. This not only increases the range of users, but also calls for a different management paradigm that takes into account land and water resources concertedly. An integrated resource management approach is a sine qua non for the sustainable management of water harvesting structures. This has an implication not only for water rights – surface and groundwater, but to land rights and rights to usufructs as well. Due to various sectoral developmental policies and programmes adopted over the years in several states, there are a plethora of community level organizations set up legally through statutes or governmental orders, that have a bearing on water resources administration - fishermen cooperatives, watershed committees, community forestry committees, self help groups, women's development groups, youth groups, individual beneficiaries of developmental loans and subsidies etc. While the mobilization of this hitherto 'unorganized sector' is to be welcomed, these groups exert their various rights in competition, without any legally empowered mechanisms for resolving such competing claims equitable and sustainably. This occurs primarily because of the lack of cohesion between the *legal* management of land and water resources at the local level and the various "developmental schemes" produced by various departments and agencies, and implemented without any reference to each other or to the resource base, existing rights, and right holders etc. Both are "top down" phenomena, with little scope for local groups to take initiatives to adjust their respective rights amicably. While such "adjustment" occurs on an informal level on the basis of the traditional social organization obtaining within local communities, all too often, socially and economically disadvantaged groups having less negotiating powers lose out to their more powerful neighbours.



Balancing various rights from water systems and implementing land and water management concertedly thus requires the involvement of the larger village community and not merely irrigators. Such a mobilization requires a larger institutional framework than a water users' association. Secondly, it also requires a political and legal mandate that may not be in the province of a water users' association alone, but is well within that of an institution such as the Panchayat, with Constitutional authority, and a Gram Sabha, a legal institution that comprises all potential decision makers of a village.

However, the implementation of legislation on 'farmers' participation' in irrigation management is taking place in the several states without any reference to these fundamental issues. Allowing a token representation to Panchayat representatives in water users' associations, as has been envisaged in some states, can hardly answer the requirements of local governance of resources. Needless to say, not only will this effort fail to achieve the objective of sustainable management of the water systems, it will also create long standing institutional conflicts within rural communities, and thereby become amenable to exploitation by conflicting economic and political interests.

Thus, participatory irrigation management, particularly with respect to minor irrigation, requires to be viewed in the larger perspective of integrated natural resource management, and the local resource-dependent community as a whole. The horizontal integration of irrigators or other water users' associations with Panchayat Institutions needs to be within a conceptual framework that advocates a decentralized control and management of land and water resources.

### *2.9 Effects of Other National Policies*

Policies on participatory irrigation management represent one type of loosening of State control and decentralization of management in the irrigation sector. National and state level watershed development programmes implemented sporadically represent another. However, these are minor in scale in comparison with structural changes that have been initiated in furtherance of the liberalization [and subsequent globalization] of the economy. It is a matter of utmost concern that in this context, withdrawal of State controls is in favour, not of people's institutions such as PRIs, or user constituencies, but of national and international industrial enterprises. In Tamilnadu for instance, Government has recently announced a policy inviting national and international companies to invest in the development of "waste lands" which would be leased out to them on a long term basis, for establishing industrial enterprises. This is expected to generate local employment and growth. However, such "waste lands" are not only in most cases CPRs on which are dependent the livelihoods of the rural poor, but they also constitute catchment areas of the innumerable tanks in the State. Similar privatization of land is taking place across the county, presenting a serious risk to water resources development, conservation and management. The introduction of multinational investment in several sectors such as agriculture, mining etc. represent an alternate path of development contradictory to empowerment of PRIs and local communities, which is what is required for integrated and sustainable management of natural resources.

### 3.0 CONCLUSION

That local governance of water resources was a tradition in India is proved by the singular evidence of traditional water technologies in India <sup>33</sup>. Technologies were designed locally to harvest and store rainwater for various local purposes. The structure of these varied water systems indicates a combined land and water management paradigm. These systems could only have been sustained through local management institutions that could enforce rules and regulations on the users of such land and water resources. This implies some powers of control over these resources. In at least one instance, archeological evidence exists that testify to such powers of control over land and water resources <sup>34</sup>. That similar arrangements were available in other parts of the northern and southern region may be surmised from the surviving technologies themselves. The application of colonial principles of resource management – centralization of control and administration of land and water resources, and unsustainable exploitation of natural resources – severed the links between local populations and governance mechanisms. The same pattern was continued into the post-Independence era, the legacy of which has not been sufficiently altered either by the recent Constitutional amendments on Panchayat Raj, or by new policies. An examination of policy and legal developments since Independence, and the provisions of post-73<sup>rd</sup>-Constitutional-Amendment Panchayat legislation in some states reveal this fact.

There is no gainsaying the fact that decentralized and integrated management of resources is required in current times as well. However, this requires devolution of legal powers over land and water resources to levels below the Centre / State where it now vests..

Doubts have often been raised about the capacity for self governance of PRIs, particularly at the lowest levels. There is a widespread disinterest and incapacity of PRIs to assume the responsibilities of self-governance. The long history of State control [as evidenced by panchayat and resource legislation] has resulted in a fractured, corrupt and inequitable rural society, which favours and promotes individual exploitation of resources in contradiction to community interests. Local skills of governance have become eroded.

With the development of various institutions and interest groups at the village level through several policies and programmes, the need for efficient local governance to deal with varied needs and rights has also emerged. In spite of their many infirmities, Panchayat Institutions as elected bodies, not just legal but also now Constitutional, are logically the appropriate institutions in which powers of governance must be devolved. At the same time, policies and programme for strengthening the capacities of PRIs are urgently required.

In effect, a decentralized governance framework that includes the functions of law making, law enforcement, dispute resolution, etc. based on localized control of resources

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<sup>33</sup> Eries, bhandaras, khadins, johads, kuhls, guls, wells of various types. See Supra Note 3

<sup>34</sup> See Supra note 7.

is required. Such a governance framework has to be supported and strengthened by national or regional statutory arrangements for the declaration and protection and of the rights of socially, economically and politically disadvantaged groups in society, which have become eroded over the centuries. Such a change cannot be achieved by mere tinkering with Panchayat legislation. A fundamental reform in law and policy on land, water and forest law is required.

A watershed has been reached in the matter of devising an appropriate policy and legal framework for the governance of water and other natural resources in India. Local, regional, national and now international interests are at play. There are a multiplicity of uses or functions, and a corresponding multiplicity of stakeholders.

A new law and policy framework has to achieve a balance between the empowerment of citizens, sustaining nature, ensuring equity, and achieving growth and development – all in the context of a globalizing national economy. What is required in the making of a new law is the generation of consensus on rights, institutional frameworks and governance processes through a wide-ranging consultative process nationally.

## **ANNEXURE - 1**

Provisions in the Orissa Gram Panchayat Act.

1). Sec.46. Transfer of Duties and Powers to Grama Panchayats. While the Grama Panchayat may not exercise any duties or powers with respect to any matter under the direct administrative control of any other local authority, or any department of the Central or State Government, such duty or power may be transferred or delegated to the Grama

Panchayat by order of the local authority or the Central or State Government as the case may be.

2). Sec 47 Execution of development works by Grama Panchayat. The State Government may entrust to the Grama Panchayat the execution of any development work, within the Grama, with an estimated cost not exceeding the prescribed amount. Rules 31, 32, 34, 34A, and 35 (The Orissa Gram Panchayat Rules 1968) lay down the procedures for the same. While the value of works which the Gram Panchayat can execute by itself is very meager ( Only Rs 250/- Rupees Two Hundred and Fifty), it may implement works with the administrative and technical sanctions of prescribed authorities of up to two Rupees Lakh.

3) Vesting of Properties in the Grama Sasan. The Grama Sasan, ( registered electorate forming the general body of the village, for the purposes of the Panchayat Act ) being a body corporate, with perpetual seal and succession, is empowered to have properties vested in it. However, the potential of village panchayats to hold and manage property has not been exploited fully. The Panchayat Act specifies which of such properties vest in the Gram Sasan, and which properties may be transferred to it. However, there are several provisos to the relevant sections, which retain the vesting of properties entirely under the discretion of the State Government.

Under Sec. 71 (1), are mentioned four types of properties (civic amenities, land and buildings) which shall vest in the Grama Sasan, provided they are not maintained by any local authority or the Central or State Government. The Government also retains power under Sec.71 (2) to remove any properties from the control of the Gram Sasan.

Sec.71 (3) provides that properties within the Grama belonging to, maintained, managed or controlled by the State Government may, by special orders issued from time to time, with such terms and conditions as the Government may think fit, vest in the Grama Sasan and be under its management, direction and control.

Under Sec.71 (4), some properties have been specifically declared to vest in the Grama Sasan, subject however to the provisions of Sec.71 (3). These are:

- (a). Village Roads.
- (e) Irrigation Sources.
- (f) Ferries.
- (g) Waste Lands and Communal Lands.

Thus under the Orissa Grama Panchayat Act, while Panchayats have not been given any mandatory or discretionary powers to implement , control or manage irrigation works, irrigation sources within their limits have been vested in them. It has also not been clarified as to what type of sources village panchayats may exercise control over.

4) Sec. 73 (1) & (2). Allocation of public property to Grama Sasan. The State Government may allocate any public property situated within the Grama to the Grama Sasan, and thereafter such property shall vest in and come under the management of the Grama Sasan, subject to such conditions, limitations and

restrictions as the Government may determine. The allocation may also be reversed by the Government if it considers expedient in the public interest to do so.

- 5) Sec 74. Powers to acquire land. The Grama Sasan may acquire any land through negotiation with any individual or through the aegis of the Collector. On acquisition, such land will vest in the Grama Sasan.
- 6) Sec 83. Taxes which may be levied by the Panchayat. The types of taxes which a Gram Panchayat is empowered to levy does not include irrigation water charges, but includes water rates for supply of drinking water, revealing its competence to levy the former, if the Government so desires.
- 7) Sec 93. Provision for Grama Fund. Provision has been made for the Gram Panchayat to hold and operate a Grama Fund, in which may be deposited all its incomes from all sources. Among these is included such income as may accrue from any property or institution or undertaking or work under the direction, management and control of the Grama Sasan.
- 8) Sec.95 Power to Borrow . Under this section, the Grama Sasan has been empowered to borrow, with the previous sanction of the State Government, money from the State Government, any local authority, or any individuals or body of individuals corporate or not, to carry out its purpose.
- 9) Sec 109 Control and Supervision over Gram Panchayats. Provision for general powers of inspection, supervision and control over the exercise of powers, discharge of duties, and performance of functions by the Grama Panchayat has been made under the Act. Orissa Government has issued Instructions specifying the extent of power and jurisdictional areas of officials belonging to different departments to exercise such genral powers of supervision. With regard to Lift Irrigation, the following arrangement is made.

Officer Authorized	Extent of Power	Area of Jurisdiction.
Director of Lift Irrigation, Orissa.	Powers to inspect offices of Grama Panchayats in respect of works and programmes with which he is concerned.	Whole State.

- 10) Sec 112. Deputation of Officers to advise Grama Panchayats. The Act provides that the Collector may, by general or special order, direct any officer of any department of Government engaged in development work within the district to attend any meeting of the Grama Panchayat and to advice and assist such Panchayat on any matter relating to the work.
- 11) Sec 125 Constitution of Committees. This section mandates the constitution of Standing Committees by Grama Panchayat for the efficient discharge of its function. Its also enables the Grama Panchayat to constitute from time to time such other Committees as it may deem expedient, to assist it in the discharge of any specified duties or class of duties. The Government shall have the power to specify the number of persons as may be co-opted from outside by the Grama Panchayat to such committees.

- 12) Sec. 127. Joint Committees. Provision has also been made for the constitution of joint committees by two or more Panchayats by means of a written instrument subscribed by them for the purpose of transacting any business in which they are jointly interested; powers, which such conditions as the Panchayats may think proper, may be delegated to such joint committees to frame schemes binding on the respective Gram Panchayats as to the construction and future maintenance of any joint work and the power which may be exercised by any such panchayat in relation to such scheme.
- 13) Sec.146 Settlements of disputes between different Grama Sasans and between different Grama Sasans and other local authorities. For settlement of any disputes in respect of any matter arising under the provisions of the Panchayat Act or any other law, provision has been made under this section. Elected bodies at the intermediate level (panchayat samities) and district level ( Zilla parishads ) form the first fora for resolution of disputes between two or more Grama Sasans occurring within the same Block, or within the same district. Where local authorities are involved in the dispute or where the dispute involves two or more districts, government authorities such as the Collector and Revenue Divisional Commissioner are involved. Provisions are made for appeal up to the level of State Government.

Interestingly, the section provides further that no suit shall be entertained by a Civil Court in respect of any dispute referred to under this section.

## ANNEXURE II

### Progress of India's Irrigation 1951-1985

	Government outlay expenditure (Rs. Crores)	Cumulative Irrigation potential created (million hectares)	Investment (Rs.) per
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		Major & medium Irrigation	Minor Irrigation	Total	Major and medium Irrigation	Minor Irrigation	Total	hectare of additional potential created in major & medium irrigation projects in each period
Preplan		NA	NA	NA	9.70	12.90	22.60	NA
First Plan	1951-56	380	76	456	12.20	14.06	26.26	1,520
Second Plan	1956-61	380	142	522	14.30	17.79	29.09	1,810
Third Plan	1961-66	581	328	909	16.60	17.01	33.61	2,526
Annual Plan	1966-69	434	326	760	18.10	19.00	37.10	2,893
Fourth Plan	1969-74	1237	513	1750	20.70	23.50	44.20	4,758
Fifth Plan	1974-78	2422	631	3053	24.82	27.30	52.12	5,927
Annual Plan	1978-79	977	237	1214	25.86	28.60	54.46	9,384
Annual Plan	1979-80	1079	260	1339	26.50	30.00	56.50	16,859
Sixth Plan	1981-82	1357	300	1657	28.20	32.77	60.97	15,167
	1982-83	1510	328	1838	29.10	34.16	63.26	16,780
	1983-84	1702	394	2096	30.04	35.59	65.63	18,105

Source : Centre for Monitoring Indian Economy, 1984 cited in *Irrigation & Agricultural Growth* : A Vaidhyanthan : MIDS (1987).