BLE-004: RURAL LOCAL SELF GOVERNANCE

PART A

Q.1. Define Gram Sabha. Discuss the powers and functions of Gram Sabha.

Ans. DEFINITION OF GRAM SABHA:

The Gram Sabha is the basic unit of direct democracy. In the 73rd constitutional amendment, it was conceived as the basic forum for deliberative democracy, where people would participate simply by dint of being citizens of India. This institution is very important as it gives an opportunity to each and every voter of the Gram Panchayat to take part in decision-making, planning and development.

Article 243(b) defines Gram Sabha to mean a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level. Article 243A states that a Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of the State may by law provide.

Article 243(9) defines ‘village’ to mean a village specified by the Governor by public notification to be a village for the purposes of Part IX and includes a group of villages so specified. This definition permits the Governor to declare any populated rural area as a village.

The demarcation of a village for the purposes of giving effect to Part IX of the Constitution may come in conflict with the sociological/anthropological notions of ‘village’ that prevail among the people of an area. The effective constitution of a GS will mainly depend on the definition of a ‘village’ adopted in various state legislations. While in certain legislations, the definition of a village is co-terminus with that of a ‘revenue’ village, in others it is based on habitations or groups of villages.

The Supreme Court, in State of U.P. v Pradhan Kshetra Samiti, held that among other things, the process of defining a ‘village’ must comply with the following conditions:

1. the village has to be a habitat according to the anthropological concept;
2. the village for the purposes of the Panchayat can be specified only in accordance with the aspirations and wishes of the inhabitants of the village as conveyed to the Governor who is obliged to notify it without involvement of the State Government; and
3. the Governor has to act independently of the State Government in the matter of specification of a ‘village’.

As regards the Gram Sabha, the Court re- asserted the view of the 73rd amendment that “the Gram Sabha is a constitutional entity based on the geographical and sociological entity of a ‘village’”, and it is not within the powers of the State Government to identify or notify a ‘village’ for administrative purposes.

* POWERS OF GRAM SABHA

Some powers and functions of Gram Sabha:

1) Examine annual statement of accounts and audit report.

2) Discuss report on the administration of the preceding year.

3) Review programme of work for the year or any new programme.

4) Consider proposals for fresh taxation or for enhancement of existing taxes.

5) Select schemes, beneficiaries and locations.

6) Mobilise voluntary labour and contributions in kind and cash for community welfare programmes.

7) Render assistance in the implementation of development schemes.

8) Promote unity and harmony among all sections of society.

9) Seek clarifications from the Mukhia and other members of the Gram Panchayat about any particular activity, scheme, income and expenditure.

10) Consider the budget prepared by the Gram Panchayat and future development programmes and plans for the Gram Sabha area.

11) Consider and scrutinise existing schemes and the activities of the Panchayat.

12) Maintain a complete register of all development works undertaken by the Gram Panchayat or by any other government department.

13) Scrutinise the completed works of the Gram Panchayat.

14) Prepare plans for local development including minimum needs, welfare and production oriented programmes.

15) Prepare lists of all able bodied persons to whom employment is to be provided under local wage employment schemes.

Certain states have vested the Gram Sabha with certain unique powers, thereby giving them additional authority and control over the Panchayat. Moreover, since Gram Panchayats may consist of one or more habitations or villages, some states have provided for creation of smaller entities for each constituency in a Panchayat.

Q.4. What is Disaster Management? Discuss various types of Disasters.

Ans. Disaster Management:

According to the Disaster Management Act 2005, ‘disaster management’ means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

1. prevention of danger or threat of any disaster;
2. mitigation or reduction of risk of any disaster or its severity or consequences;
3. capacity-building;
4. preparedness to deal with any disaster;
5. prompt response to any threatening disaster situation or disaster;
6. assessing the severity or magnitude of effects of any disaster;
7. evacuation, rescue and relief;
8. rehabilitation and reconstruction.

Disaster prevention is defined to encompass activities designed to provide permanent protection from disasters, which will include engineering and other physical protective measures, and also legislative measures controlling land use and urban planning. The goal of any disaster management programme should be vulnerability reduction to all types of hazards, be it natural or manmade. A typical disaster management programme comprises of six elements, that is, prevention, mitigation and preparedness in the pre-disaster phase; and response, rehabilitation and reconstruction in the post-disaster phase.

* TYPES OF DISASTERS AND AGGRAVATING FACTORS:
* Natural disasters

1. Wind related: storms, cyclones, tornados, tidal waves, etc.
2. Water related: flood, cloudburst, flash floods, torrential rainfall, and drought.
3. Earth related: earthquakes, landslides, tsunamis, avalanches, volcanic eruptions.

* Man-made disasters

1. Accidents, on road, rail, air, sea, building collapses.
2. Industrial mishaps like gas leaks, explosions, sabotage.
3. Fire in buildings, coal mines or oil fields and storage areas.
4. Contamination/poisoning of food, water, illicit liquor, epidemics
5. Terrorist activities, communal violence, civil strife, war, etc.
6. Ecological pollution, soil degradation, loss of bio-diversity, global warming, toxic wastes, nuclear accidents, etc.
7. Conventional, chemical or nuclear warfare.

* Select Issues Aggravating Factors of Disasters

A disaster is assessed on the basis of the following features:

* Disruption to normal pattern of life - such disruption is usually severe and generally is also sudden, unexpected and widespread.
* Loss of life, livelihood and property, injury, hardship and adverse effects on health.
* Effects on social structure such as destruction of or damage to infrastructure, buildings, communications and other essential services.
* Community needs such as shelter, food, clothing, medical assistance and social care.

The severity of the impact of each disaster is reckoned in terms of deaths, damage or costs which are dependent on the existing socio-economic conditions of the affected community.

In fact, the misery of the affected people is usually increased by the following aggravating factors:

1) Poverty: Poverty makes people more vulnerable to all the impacts of disasters. It is only due to poverty that people are forced to live in more vulnerable areas such as flood plains of rivers, without good living conditions and often suffer from scarcity of food.

2) Population growth: If there are more people and structures per square meter when disaster strikes, there will be greater losses. Increasing number of persons will compete for limited resources leading to conflict. This conflict may result in crisis-induced migration and violence.

3) Rapid urbanisation: rural poor or people in disadvantaged areas move to urban and metropolitan areas in search of economic opportunities and security. These people find few options for availability of safe and desirable places to build their houses, which forces low-income families to settle on the slopes of steep hillsides or banks of rivers, thereby increasing their vulnerability to landslides and floods respectively.

4) Environmental degradation: Deforestation leads to rapid rain run off, which contributes to soil erosion and flooding. The destruction of mangrove swamps decreases the resistance of the coastline to withstand strong winds and storm surges. Drought conditions may be intensified by deforestation, overgrazing, stripping of topsoil, poor conservation techniques and depletion of both the surface and subsurface water supply.

5) War and civil strife: War and civil strife are regarded as hazards, that is, potentially harmful situations that produce disasters.

PART B

Q.5. What is Right To Health? Discuss the international instruments and constitutional provisions which guarantee this right.

Ans. Right To Health:

The World Health Organization defines the right to health as “a complete state of physical, mental and social well-being, and not merely the absence of disease or infirmity.” States should ensure both freedoms and entitlements.

* Right to Health therefore can be understood as having four key cornerstones:
* Availability – public health care facilities must exist in a sufficient quantity to meet the demands of the population. Avalibility does not mean merely medical care but also includes the availability of safe drinking water, sanitation facilities along with hospitals, clinics, trained medical personnel and essential drugs.
* Accessibility – health care facilities must be both physically and economically affordable Accessibility to these services must also be available to one and all without any discrimination.
* Acceptability – health facilities need to be in conformity with medical ethics as well as not be culturally inappropriate.
* Quality – all health facilities, drugs and medical procedures must conform to some basic quality standards.
* Right to Health under International Legal Instruments:
* The 1948 Universal Declaration of Human Rights (UDHR) under Article 25
* The International Covenant on Economic, Social and Cultural Rights (1966) in Article 12
* The Committee on Economic, Social and Cultural Rights in its General Comment no. 14 issued during its twenty second session in Geneva in 2000.
* 1978 declaration of Alma
* The Convention on Elimination of All Forms of Discrimination Against Women (1979) under Article 12
* Article 24 of the Convention on the Rights of the Child (1989)

India is a signatory to all the aforementioned International Instruments and is thus obligated to ensure the Right to Health to its citizens.

* Constitutional Provisions Related to Right to Health in India:
  + Fundamental Rights:

Article 21 of the Constitution of India guarantees a fundamental right to life & personal liberty. The right to health is inherent to a life with dignity.

* + Directive Principles of State Policy (DPSP):

Articles 38, 39, 42, 43, & 47 put the obligation on the state in order to ensure the effective realization of right to health.

* + Judicial Pronouncements:

Supreme Court in Paschim Bangal Khet Mazdoor Samity case (1996) held that in a welfare state, primary duty of the government is to secure the welfare of the people and moreover it is the obligation of the government to provide adequate medical facilities for its people.

* + Also in its landmark judgment in Parmanand Katara Vs Union Of India (1989):

Supreme Court had ruled that every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.

Q.7. Discuss various types of Land.

Ans. Types of Land

Land can be categorised as follows:

* Private Lands: Lands owned by individuals or institutions/companies is categorised as private lands. These lands are also called patta lands. The owners of these lands have absolute rights over their land, including the right to use, sell, lease and mortgage. However, the rights over these lands are subject to the State’s power of eminent domain and can be acquired for a public purpose. In addition, lands cannot be owned beyond the ceiling limit prescribed by the law.
* Government Lands: These are lands owned by the government which is the absolute owner of such lands. Laws were enacted to protect government lands from encroachment/grabbing and to punish the encroacher/grabber. The enjoyer of government land will not have any right of control or ownership. However, if that land is assignable then the enjoyer can ask that the land be assigned to him or her. For instance in AP, enjoyers of assignable government land (Sivaijamadars) are entitled to assignment of the land in their possession and enjoyment.
* Community Lands: These comprise of lands used for community purposes like roads, water bodies, grazing lands, burial grounds, etc. The government owns these lands and individual rights cannot be granted to these lands.
* Assigned Lands: These are lands assigned to the landless by the government. Generally, assigned lands cannot be alienated (sale, mortgage or lease) but can be transferred by succession. In AP, alienation of assigned land has been completely prohibited, although some exceptions to this rule have been created by recent amendments to the law.
* Ceiling Surplus Lands: Lands in excess of the ceiling limit prescribed by the law are called ceiling surplus lands and the government becomes the owner of such lands. These lands have to be distributed/assigned to the landless poor.
* Gift Land: These are lands gifted by the erstwhile kings to individuals and are patta/ private lands. Laws have been enacted to regularise gift lands.
* Bhoodan Land: In 1951, the Sarvodaya leader, Shri Vinobha Bhave, started the bhoodan movement in which landlords donated land which was taken possession of by the concerned State Governments. Such lands are called bhoodan lands.
* Temple/Church/Mosque Lands: These are lands belonging to religious institutions. Administration of these lands is done by the respective religious institution.
* Conclusion:

Land, not only an economic and social but also a psychological capital, is still the pivotal asset in terms of both income and employment, around which socio-economic privileges and deprivations revolve. Landlessness is the biggest root cause of poverty in rural India. Our country has the largest number of landless households, despite being the seventh largest country in the world- in terms of size.

Q.8. Write a note on Water Rights.

Ans. Water Rights

A basic component of water law is water rights. Apart from the fundamental right to water (for drinking and domestic use), there are several other rights over water resources. It must be also noted here that though the private proprietary rights over surface water is rather limited, extensive private rights are exercised over ground water.

These are some of the most important water rights recognized in India:

* Riparian Rights:

‘Riparian land’ is the land, which is in contact with the flow of the stream. The establishment and recognition of riparian rights, has occurred mainly through the common law method of recognising customary law and natural rights.

* User Rights or Usufructory Rights:

User rights or usufructory rights do not give ownership rights over water but merely grants rights of use.

* Customary Rights and Common Property Resources:

Section 2 (b) of the Indian Easements Act, 1882 gives recognition to customary rights, both for groups and individuals. The Act recognises two types of customary rights of the people – a) by long use or prescription and b) by local custom.

* In India, the Central Government passed the 73rd and 74th amendments to the Constitution in 1992-

thereby requiring the State Governments to create a statutory three tier local self-government structure down to the village level. Several natural resources including tanks and ponds were brought under the jurisdiction of these bodies.

* The Indian government also passed a Panchayats (Extension to Scheduled Areas) Act (PESA) in 1996-

which empowered the Gram Sabhas in the Scheduled Areas (specified in the Fifth Schedule of the Constitution) to have the right to decide upon or veto development projects within their jurisdiction. Therefore, the practices followed by the community from time immemorial over water bodies fall under the scope of custom and customary practices.

* Water Rights The right to life enshrined in Article 21 has been held to recognise rights of the community over water
* The Indian Easements Act, 1882 recognises certain customary rights over the use of water.
* Section 25 of the Limitation Act, 1963 also recognises the absolute and indefeasible right of use and access to water if it has been enjoyed without interruption for a period of twenty years.
* The Tribal Self-Rule Act, 1996 and the Panchayats (Extension to the Scheduled Areas) Act, 1996 recognise the right of access of tribal and other communities to natural resources like water.
* The remedies against violation of water rights are both statutory as well as in common law. Apart from the irrigation statutes, the statutory remedies are found under the Environmental (Protection) Act, 1986; the Water (Prevention and Control) of Pollution Act, 1974; the Indian Penal Code, 1860; and the Criminal Procedure Code, 1973. A writ petition can also be filed under Article 32 in the Supreme Court or under Article 226 in the High Court for seeking remedy against violation of water rights. The Inter State Water Disputes Act, 1956, invoked quite extensively in the country to address problems relating to sharing of waters between states, is another important statute and we discuss that in greater detail in the section on water conflicts.

Q.10. What is social audit? How it facilitates the accountability in the implementation of the socal welfare schemes?

Ans. SOCIAL AUDIT:

A social audit is useful to understand the qualitative impact of the work undertaken by PRIs. Social audit can be defined as the process by which details of financial and non-financial resource used for different development initiatives by state agencies, is shared with the citizens. This process involves gathering of Financial Powers information from various sources, organising of beneficiary groups and scrutiny of the information.

The RTI Act, 2005 and its State equivalent statutes are meant to facilitate the ‘watchdog’ functions of citizens, to demand information from state agencies which may throw crucial light on the way public resources have been used. The Panchayats (Extension to Scheduled Areas) Act, 1996 empowers the Gram Sabha to conduct social audits by vesting powers over minor forest produce, powers of expressing opinion of land acquisitions to be undertaken, certification of village works undertaken, etc.

Case studies of non-formal audits involving Panchayats. Even though there are no formal policies to introduce social audit procedures within the Panchayat systems, civil society organisations have carried out social audits in various states. This creates more awareness amongst people about their right to information, and the ways and methods of using information vis-à-vis government agencies. The issues that were taken up involved various infrastructure works, PDS system, Anganwadi, and Panchayat accounts of the previous three years.

The audit found that:

* Although the works were not carried out, the sanctioned funds were shown in the records as having been utilised.
* Contractors were banned under government guidelines, but 31 contractors were working on the project.
* The contractors did not maintain muster rolls.
* Instead of the target of 100 man-days of employment for families below the poverty line (BPL), only 12 half days’ work were generated.
* The BPL families could not buy subsidised food from the public distribution system (PDS) shops as partial wages because they did not possess the needed ration cards.
* The local bureaucracy had failed to monitor and check the possibilities of corruption. There were many instances when they were in collusion. For instance, the junior engineer had certified many ghost works through his measurement books, with the BDO certifying them too.
* After the audit, people submitted a memorandum of demands asking for an Enquiry Committee to be set up by the District Collector and various records to Constitutional Framework be made open to public scrutiny.

Parivartan, an NGO in Delhi working on the realisation of the right to information, has facilitated social audits relating to transparency in PDS systems.

* Conclusion:

Though social audits are gaining in popularity, they are yet to become effective modes of monitoring the Panchayat system. A more widespread and regular practice of social audits at the Gram Sabha level will ensure greater transparency and accountability in service delivery under government schemes, and imbibe greater efficiency in political representatives and bureaucrats at all levels.

Q.11. Explain Eminent Domain with suitable examples.

Ans. EMINENT DOMAIN

The theory of ‘Eminent Domain’ refers to the power of the government to take private property for a public purpose, even if the property owner objects. This theory is prevalent in most countries having a common law system. According to the theory, it is the inherent power of the State to seize a citizen’s private without the owner’s consent. The most common uses of property taken in the exercise of eminent domain are for public utilities like water and electricity services, highways, and railroads.

The belief is that all properties are protected by the State and lie in what scholars call ‘eminent domain’ of the State.

* INDIAN CONSTITUTION AND EMINENT DOMAIN:
* The theory of eminent domain creates a restriction on the right to property by empowering the Government to acquire land even without the consent of the owners. Therefore, we need to understand the status of this theory under our Constitution.
* The power of eminent domain is found in Entry 42, List III of the Seventh Schedule to the Constitution, which says “Acquisition and Requisitioning of property”.
* Article 31 also laid down that no person could be deprived of property without the due process of law.
* However, a series of amendments gradually weakened the fundamental right to property in order to implement the goal of land reforms. As a result, the power of eminent of domain was expanded as these amendments increased the power of the State to acquire property.
* The first change to the right to property was in 1951 with the First Amendment to the constitution. The fundamental right to property guaranteed by Article 31 was curtailed to implement agrarian reforms. The Amendment also created a list of land reform laws in the Ninth Schedule which put those laws outside the purview of judicial review.
* Later in 1955, the Fourth Amendment modified Article 31 (2) and added Article 31(2)(A) to clearly outline the power of the government to acquisition and requisition land.
* The Twenty-fifth Amendment in 1971 further changed Article 31 to substitute the word “compensation” with “amount”. This tremendously increased the power of the State to acquire land and reduced the obligation to pay any compensation.
* The final blow came with the famous Forty-fourth Amendment in 1978, when the fundamental right to property was removed altogether and made a mere legal right under Article 300. As a result, any individual’s right could be taken away under any valid law of the Union or the State Government.
* Conclusion:

The need for land reforms resulted in an increase in the importance of the theory of eminent domain in our constitutional scheme. As the scope of the fundamental right to property was slowly curtailed and later completely removed, the State’s power to compulsorily acquire property was widened.

PART C

Q.12. Constitution 73rd amendment.

Ans. The Constitution (73rd Amendment) Act was passed in 1992 and it came into effect on 24 April 1993. The Act empowered state governments to take the necessary steps that would lead to the formalisation of the gram panchayats and help them operate as units of self-governance.

* The chief features of the act are mentioned below:
  + This Act made the Panchayati Raj institutions in the country constitutional bodies.
  + Under Article 243-B, it has become compulsory for every state to establish panchayats in their territories.
  + Article 243-G makes it mandatory for the state governments to devolve powers, responsibilities and authority to the panchayats.
  + The gram panchayats have a fixed tenure of 5 years.
  + State election commissions have been provided with the mechanism to conduct independent elections to the village panchayats.
  + Article 243-D gives provisions for the due representation of women and SC/STs.
  + The State Finance Commission should also evaluate the financial position of the panchayats every five years.

### Result of the 73rd Amendment:

* The passing of the 73rd Amendment has improved local self-government in the country vastly.
* In order to celebrate this and further give impetus to the institutions, the central government in 2010 decided to observe 24th April every year as **National Panchayati Raj Day**.
* Today, the formalised Panchayati raj functions in three levels namely, the Gram Panchayat (at the village level), the Mandal Parishad/Panchayat Samiti/Block Samiti (at the Block level), and the Zila Parishad (at the district level).

# Q.13. State Finance Commission.

# Ans. State Finance Commission:

## A State Finance Commission reviews the financial position of the panchayats in a state and makes recommendations to the Governor.

* The 73rd amendment gave the Gram Panchayats a real boost in the form of endowing it with a constitutional status, thereby assigning to them – funds, functions and functionaries.

## Appointment of the State Finance Commission:

* Under Article 243-I of the Constitution of India, the governor of a state is required to constitute a Finance Commission every five years.
* This is in order to decide the resource allocation between the state government and the Panchayati Raj Institutions.
* Article 243-Y also brought city councils or municipalities under the purview of the State Finance Commission.

## Role of State Finance Commission:

A State Finance Commission reviews the financial position of the panchayats in a state and makes recommendations to the Governor about the principles that should govern the distribution of tax proceeds – taxes, duties, levies, toll fee collected by the state between the state and its Panchayati Raj Institutions at all three levels – village level, block level and district level.

## Recommendations of a State Finance Commission:

* Taxes, levies and fees levied or appropriated by Panchayats themselves.
* Grants-in-aid to Panchayati Raj Institutions from the consolidated fund of a state.
* Ways to improve the financial position of the Panchayati Raj Institutions.
* Measures for the overall improvement of Panchayat’s finances.

## Action Taken on State Finance Commission’s Recommendations:

Under Article 243-I of the Indian Constitution, the governor of a state ensures the laying of a State Finance Commission’s recommendations to the table of the state legislature. It also includes a memorandum of action taken by the government on the Commission’s report.

Q.15. Land Rights of Tribals.

Ans. LAND RIGHTS OF TRIBALS:

Land is the principal source of livelihood for the tribals. Their dependence on land for livelihood is increasing enormously due to the degradation of forests (another important source of livelihood) and lack of, or the inability to use, alternate avenues of employment. This principal source of livelihood is under tremendous threat from non-tribals. Special laws exist for protecting the tribals’ land rights. However, considerable amount of land of tribals has been encroached upon by non-tribals.

For instance, in AP, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (popularly referred to as LTR) prohibits transfer of immovable property by any person except in favour of Scheduled Tribes in the Scheduled Areas. This law has a provision stating that all lands in Scheduled Areas belong to the tribals. In spite of such stringent provisions, more and more lands are passing into the hands of non-tribals.

Most of the cases of alienation are not brought before the authorities. Even if the cases are brought before the authorities, many tribals are losing the cases. Out of 70,183 cases decided under LTR, 33,319 cases (47.47%) were decided against the tribals involving 1,62,989 acres of land.

As per the Ministry of Rural development (Government of India), during 2003, the total number of cases of land alienation filed in courts were 3,75,164 involving an area of 8,55,282 acres. Of these, the number of cases disposed off were 3,17,643. The number of cases in which the decision was in favour of tribals was 1,62,650, which is a little above fifty per cent of the cases decided by the courts.

* Conclusion:

Alienation of lands to non-tribals and establishment of developmental projects is rendering land rights meaningless for the tribals. Protective laws are not coming to their aid and they are unable to access justice.

Q.16. National Policy for Disaster Management.

Ans. NATIONAL POLICY FOR DISASTER MANAGEMENT

According to the Disaster Management Act 2005, ‘disaster management’ means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

1. prevention of danger or threat of any disaster;
2. imitigation or reduction of risk of any disaster or its severity or consequences;
3. capacity-building;
4. preparedness to deal with any disaster;
5. prompt response to any threatening disaster situation or disaster;
6. assessing the severity or magnitude of effects of any disaster;
7. evacuation, rescue and relief;
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Disaster prevention is defined to encompass activities designed to provide permanent protection from disasters, which will include engineering and other physical protective measures, and also legislative measures controlling land use and urban planning. The goal of any disaster management programme should be vulnerability reduction to all types of hazards, be it natural or manmade. A typical disaster management programme comprises of six elements, that is, prevention, mitigation and preparedness in the pre-disaster phase; and response, rehabilitation and reconstruction in the post-disaster phase.

The Government of India announced a national disaster management policy in 2004.

* The objectives guiding the policy formulation include:
* Promoting a culture of prevention and preparedness – by centre-staging disaster management as an overriding priority at all levels and at all times.
* Encouraging mitigation measures based on state-of-the-art technology and environmental sustainability.
* Developing contemporary forecasting and early warning systems backed by responsive and fail-safe communications and information technology support.
* Making reconstruction an opportunity to construct disaster-resilient structures and habitats.