



Legal and Institutional Framework of Local Self-Government in Jammu and Kashmir

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Introduction:

In our nation, the Panchayati Raj is a traditional and indigenous idea. The spirit has always been a component of our socio-cultural ethos, even though the form may change. Its roots may be found in earlier times when village communities relied heavily on their sense of community to both hold themselves together and handle their own affairs. They are miniature "republics possessing almost everything that they seek within themselves," according to Sir Charles Metcalfe. The attempts made in colonial India with the panchayat legislation passed in the provinces and princely states in 1920 and beyond can be linked to the origin of the modern panchayats. These regulations aimed to establish panchayats as local organisations responsible for maintaining roads, buildings, and other infrastructure as well as providing them with judicial authority to resolve minor disputes. The Government of India Act of 1935 allowed for the election of Congress administrations in the provinces, and these governments passed the second phase of panchayat legislation in the 1940s, allowing for more inclusive panchayats. However, panchayats are only seen in their current form as regional organisations with a strong focus on development in Independent India. According to Article 40 of the Indian Constitution, the State must organise village panchayats and grant them the necessary authority and capabilities to act as local self-government entities. The findings of two committees established by the Central government in 1957 and 1978, namely the B.R. Mehta Committee of 1957 and the Asoka Mehta Committee of 1978, were the two turning points in the development of Panchayati Raj Institutions (PRIs). However, despite the implementation of the panchayat recommendations of the Balwant Ray Mehta and Asoka Mehta Committees, the Panchayati Raj system in the nation during the post-Independence period was still plagued by a number of problems. Long delays in panchayat elections, numerous suspensions, super sessions, and dissolutions of panchayat bodies, a lack of functional and financial autonomy, insufficient representation of weaker and disadvantaged groups, and small, infrequent government funds were all issues. As a result, panchayats were unable to operate as the institutions of local self-government that the Constitution intended. This necessitates to incorporate some

fundamental and crucial aspects of local self-government in the Indian Constitution in order to give local authorities the ability to act as institutions of self-government while expanding and carrying out developmental programmes. As a result, the Constitution (73rd Amendment) Act, 1992 was approved and entered into force on April 24, 1993. The 73rd Constitution Amendment Act of 1992, which gave the PRIs a constitutional standing, ushers in a new era in the nation's federal democratic structure.

The main features of the Act are—

1. A three-tier system of Panchayati Raj for all States having a population of over 20 lakh.

Panchayat elections are to be held regularly every five years;

2. Reservation of seats for Scheduled Castes (SCs), Scheduled Tribes (STs) and women;

3. Constitution of an independent State Election Commission to hold panchayat elections on a regular basis;

4. Appointment of an independent State Finance Commission to make recommendations as regards the financial resources of the panchayats;

5. Legal status to Gram Sabhas and

6. Inclusion of Eleventh Schedule to the Constitution listing 29 Subjects within the jurisdiction of PRIs.

Panchayati Raj System in Jammu and Kashmir:

The Panchayati Raj system in Jammu and Kashmir has a long history and a strenuous past. According to legend, Maharaja Hari Singh originally implemented the Panchayati system in 1935 to resolve local conflicts among residents of rural regions. The Maharaja made the Village Panchayat Regulation Act No. 1 public. "It is desirable to create in Jammu and Kashmir State the village panchayats to help in the administrative, civil, and criminal justice as well as to manage the sanitation and other common problems of the village," stated the preamble to the aforementioned legislation.

The 1935 Panchayati Act was intended to help the judicial and civil administration, not to advance the Panchayati Raj form of government in J&K.

When Maharaja Hari Singh's control over Dogra came to an end in 1947 and full authority was given to Sheikh Mohammad Abdullah, the Panchayati Raj Act was once again modified in 1951 and 1958. The institution, however, was limited to village-level issues exclusively. The term "Panchayat" refers to a body whose members, including a *sarpanch* and even the members themselves were chosen solely by the government. This practise persisted till the late 1980s. The Government of Jammu & Kashmir did not introduce any laws until 1989. The year 1989 saw the adoption of the Jammu and Kashmir Panchayati Raj Act. The Halqa Panchayat, Block Development Council (Block Simiti), and District Planning & Development Board—also known as Zila Parishad in other states—are the three tiers of the state's Panchayati Raj system, which is still in use today. The Panchayati

Adalat (a judicial function of Panchayats) with the authority to resolve any local issues that are not criminal in nature was the most significant provision in this legislation.

Panchayati Elections:

The first Panchayat election mandated under the J&K Panchayati Raj Act of 1989 took place in Jammu & Kashmir in 2000, although the majority of the seats were vacant at the time due to terrorist threats. In the six years that followed the expiration of this panchayats' term in 2005, no elections were conducted in the state. It was only in 2011 did J&K have free and fair panchayat elections with minimal public engagement. Omar Abdullah, the state's then-chief minister, took the initiative to organize and hold the Panchayat elections. In general, these elections were a success, and practically every seat was filled.

Although Panchayat elections were held sometimes in Jammu and Kashmir, they were not required. In the past, these elections were held as and when the state authority desired. In accordance with the J&K Panchayati Raj Act of 1989, the government was not required by the constitution to hold new elections once the Panchayats' six-year terms expired. Even the 2011 elections were held for the first tier Halqa Panchayat, which consists of a Sarpanch and a few Panches. No elections were held for the block or district council, which showed that J&K politicians did not take the Panchayati Raj seriously. Despite the fact that the Jammu and Kashmir Panchayati Raj Act of 1989 included a provision for it, the institution was not permitted to advance to the second or third tier. The local government's reluctance to decentralize authority was the major cause for this.

Jammu and Kashmir Panchayat Conference:

In 2012, a group of Sarpanches led by Shafiq Mir, a Sarpanch from Poshana village in district Poonch, stepped out to organize the members of the panchayats in J&K. This was the beginning of the true campaign for a three-tier PRI system in Jammu & Kashmir. He was the first to bring together several Panchayat organisations under the All J&K Panchayat Conference banner. The organization's leaders have not turned back since that time. When numerous panchayat members were martyred by militants in J&K, this J&K Panchayat Conference chaired by Shafiq Mir endured like a rock. Recognizing the seriousness of the situation, Congressman Rahul Gandhi invited the group of Sarpanches, led by Shafiq Mir, to Delhi on September 27, 2012, and held two days of discussions with them there in the presence of the then-Minister of State for the Interior, Jitendra Singh, to discuss how to foster confidence among the Panchayat leaders of Jammu and Kashmir, who were at the time on a resignation rampage. Rahul Gandhi would visit Kashmir and meet with the Panchayat members, it was ultimately agreed. Rahul Gandhi arrived in Srinagar on October 4th, 2012, and met with the Panchayat leaders at the SKICC Srinagar to boost their confidence and promise them all of support for Panchayat empowerment. Rahul Gandhi sought to extend the 73rd amendment to the constitution to include Jammu and Kashmir, but his coalition partner, the J&K National Conference, was hesitant to do so under the guise of article 370.

The BJP and PDP took control of Jammu and Kashmir in 2014. This administration disbanded all Panchayats in one motion, two years before the end of its mandate. All J&K Panchayat Conference, however, had by that point

grown to be a powerful voice and had resumed its struggle. On November 5, 2016, a delegation of this organisation, consisting of about 40 people, met with Prime Minister Modi in New Delhi and demanded the holding of new Panchayat elections and the implementation of the 73rd amendment to the Indian Constitution regarding Panchayati Raj in Jammu & Kashmir. Following the murder of a well-known terrorist commander named Burhan Wani in July of the same year, the entire valley was closed at this time. At the time, the organisation made a highly audacious choice since it was perceived as going against the current. Even though the PDP-led government in Jammu and Kashmir wasn't ready to hold polls because of fear of carnage, PM Modi offered the group his entire support during this crucial meeting and promised to host new elections in the state. Panchayat elections were finally called by PM Modi in 2018 following the breakdown of the PDP-BJP government, although all of Jammu and Kashmir's major parties boycotted them. Particularly NC and PDP publicly abstained from the elections, and protesters had earlier called for a boycott. The sole group to come forward and declare its intention to run in these elections was the Panchayat Conference, which is run by Shafiq Mir. In general, 74% of eligible voters turned out for the elections in Jammu and Kashmir. The Kashmir valley had a lower polling percentage than the Jammu area.

2nd & 3rd Tier Elections:

After the Halqa Panchayat, the J&K Panchayati Raj Act of 1989 provides for the Block Development Council (BDC), which is the Panchayati raj's second layer of government. The Chairperson of the BDC is chosen by the Panches and Sarpanches of the appropriate block. The J&K government held the hotly anticipated elections to choose 307 Block Development Council (BDC) Chairpersons across the state in October 2019. Party lines were used to conduct the elections. Both the PDP and the National Conference abstained from voting. Only 81 of Jammu's BDC Chairperson Seats went to the BJP; the rest went to Congress and the Panthers Party. According to information provided by the office of the Chief Electoral Officer shortly after results were announced, over 217 Chairpersons were independent candidates. 26 629 Sarpanchs and Panchs, who themselves were chosen in a direct election held in 2018, chose these 307 BDC chairpersons. In the bulk of the panchayat halqas in the Kashmir Valley, scarcely any votes were cast, and dozens of Sarpanches and Panches were elected only by their own votes or, at most, by the votes of two or three members of their families. Both the Halqa panchayat and BDC polls were promoted by the government apparatus in the media, and for weeks on end, BJP officials claimed responsibility for holding these elections.

The J&K Panchayati Raj Act 1989 was abruptly changed by the Indian government, eliminating these elected BDC Chairpersons. In J&K, the government established 14 territorial constituencies for each district. Direct elections were used to choose the District Development Council's (DDC) members, who then chose the council's chairperson and vice chairperson (DDC). Unfortunately, the DDC members, Chairpersons, or Vice Chairpersons lack sufficient authority to decide on matters that might improve development. They barely receive any cooperation from government employees, which is causing a lot of uncertainty and mayhem. Additionally, the Gram Sabha meetings are not held in villages where there is a higher level of public engagement. All of the

adults in each panchayat Halqa should attend these village council sessions, but the Rural Development Department isn't doing much to guarantee improved attendance.

Halqa Panchayat:

The statute states that "a Halqa Panchayat should be established in every village, and each Halqa Panchayat should consist of all the individuals listed in the village's electoral list. Every fiscal year, Halqa Majlis must hold a minimum of two meetings. The Halqa Panchayat voters will elect Panches and Sarpanches directly. SCs and STs should get priority seating in Panches. Every panch and sarpanch should have five-year tenure in office starting on the election day. Additionally, a member of the Halqa Panchayat may be disqualified for a variety of reasons. The Halqa Panchayat secretary will either be a VLW or a Gram Sevak. In addition, a Sarpanch or Naib Sarpanch may be ousted from office if 2/3 of the panches vote against him. Panchayati Raj and the Department of Rural Development, 1989 The Panchayat Advisory Committee should be established, according to the statute. According to the statute, a Halqa Panchayat may be suppressed if it is incapable of carrying out its obligations and the time of suppression cannot exceed six months, during which new elections must be held. A monthly honorarium salary is due to each Panch and Sarpanch.

Powers and Functions of Halqa Panchayats:

Halqa Panchayats have the authority to "prepare plans for the development of Halqas; to deal with the problem of water management; to deal with the problem of soil conservation; to deal with agriculture; to deal with sanitation; to deal with health; to deal with animal husbandry and other welfare programmes; to regulate shops, entertainment establishments, buildings and checking of dangerous trades; to regulate the sale and preservation of fish, vegetables, and other perishable food items; to prepare and implement plans for rural industrial Panchayati Raj and the Department of Rural Development, 1989 The Halqa Panchayat's assets and funds are covered by the Act. The duties of Sarpanches and Naib-Sarpanches are also mentioned, along with the taxes and levies that a Halqa Panchayat may charge.

Block Development Council:

The Jammu and Kashmir Panchayati Raj Act contains a clause stating that "every block carrying the name of that block should have a Block Development Council." The Block Development Council will be led by a chairperson and include the sarpanches of each Halqa panchayat that is part of the block as well as the block's marketing society chairman. If the authorities feels that women, scheduled castes, or any other class has not been appropriately represented in the Block Development Council, two people may be nominated. Each Block Development Council must have I a chairman who meets the same requirements as a Panch to be elected. If a Panch or Sarpanch is chosen to lead the Block Development Council, they must resign from their position as Panch or Sarpanch immediately following their election. (ii) a Vice-Chairman, chosen by the Block Development Council members from among themselves. (iii) a Block Development Council Secretary. The Chairman's office has a five-year tenure beginning on the day of his election. While the Vice-tenure Chairman's and the terms of

the other members shall be determined by their positions as sarpanches of the relevant Halqa panchayat. A no-confidence vote against the Block Development Council chairman has the additional power to have him removed from office. Every month, the Block Development Council must meet, which must be called by the Chairman or, in his absence, the Vice-Chairman. Panchayati Raj and the Department of Rural Development, 1989.

Powers and Functions of Block development Council:

The Block Development Council's numerous authorities and responsibilities are mentioned in the Act. These include "building, maintaining, and overseeing the Inter-Halqa Panchayat Communication System; providing technical and administrative guidance to Halqa Panchayats; monitoring plans relating to rural development, agriculture, education, animal husbandry/sheep husbandry, social forestry, and public health; monitoring implementation of various government programmes like the Integrated Rural Development Programme, National Rural Employment Programme, and Rural Landless Employment Guaran Panchayati Raj and the Department of Rural Development, 1989 The Act also covers the duties of the Chairman and Vice-Chairman, the Council's property and finances, and the election procedure, which is handled by the State Election Commission.

District Planning and Development Board:

A District Planning and Development Board must be established in each district by the government, as stated in the Act, and published in the Government Gazette. This board will be made up of the president of the municipal council, the chairman of each block development council in the district, members of parliament and state legislatures who represent regions within the district, and the chairman of the town area committees in the district. The government will choose one of the Board members to serve as the Chairman of the District Planning and Development Board. The Board's members will vote among themselves to choose the Vice-Chairman. The District Development Commissioner will serve as the Board's Chief Executive, and the District Level Heads will support him in carrying out his duties. Panchayati Raj and the Department of Rural Development, 1989.

Powers and Functions of District Planning and Development Board:

The District Planning and Development Board's numerous authorities and responsibilities are mentioned in the statute. These include "to act as a working group for the formulation of periodic and annual plans for the District; to consider and guide the formulation of development programmes for the District; to indicate priorities for various schemes and consider issues relating to the swift development and economic up-liftment of the District; to periodically review the progress and attainments of development plans and schemes and to make recommendations; to formulate and finalize the plan a Panchayati Raj and the Department of Rural Development, 1989 According to the Act, all monies granted by the government or any other agency for the development of the district must pass through the board in accordance with the plans.

Constitution of Panchayati Adalats:

"The composition of Panchayati Adalats for every Halqa Panchayat" is a clause included in the Act. Each Panchayati Adalat must have five members, who must be chosen from the prepared panel by the designated authority. Each member must meet the eligibility requirements, which include being literate, being at least 30 years old, not being an elected representative, and not working for the government. Each member is eligible for nomination for five years starting on the date of the nomination. Every meeting must have a quorum of three members. If a vacancy occurs, it must be filled in the same way as described above. However, the proposed member should now take over for the remaining time. This Panchayati Adalat will have civil and criminal authority, and it will handle neighborhood conflicts. (Panchayati Raj and the Department of Rural Development, 1989).

Conclusion:

The decision making affairs in the panchayats need to be better defined, to diminish the possibility of elite capture, proxy participation and single point decision. The Panchayati Raj Institutions are functional in almost every state of India. The concept of governance in the context of Jammu & Kashmir needs to be elaborated and detailed. Long spells of Governor's rule, suspension of municipalities and other local bodies and non-existence of panchayats have had a bearing on the governance of the state.

To conclude there are various other challenges before Panchayati Raj in J&K viz; mismanagement in the Panchayati system, political influence, corruption, lack of motivation, inappropriate use of funds, lack of responsiveness, lack of transparency, lack of skills and man power, lack of infrastructure, and lack of proper guideline. Panchayat system neither develops nor properly works because of these challenges.

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