

Evolution of Panchayati Raj and Panchayat Adalats in Jammu and Kashmir with Special Reference to 73rd Amendment Act

Abstract

People in the villages of India have always managed to solve their problems and settle disputes through village councils or 'Gram Panchayats'. The word 'Panchayat' designates the decision of the 'panches', i.e. the five elderly, learned and wise men. These dispute resolving institutions as Panchayat court, function under various names like Nyaya panchayat, Gram Kachheri etc. to decide civil and criminal disputes of petty and local nature at the village level. In the State of Jammu and Kashmir this has been designated as "Panchayati Adalat" and the Government has enacted Panchayati Raj Act-1989 and Panchayati Raj Rules-1996, to provide powers and civil/criminal/territorial jurisdictions to these rural courts. This paper traces the evolution of Panchayati Raj and Panchayati Adalat in the State of Jammu and Kashmir. In this state Panchayati Raj Act 1989 envisage a Panchayati Adalat for every Halqa which generally consists of a contiguous number of villages as determined by the Government under Section 48(I). Panchayati Adalat has emerged as one of the important judicial and dispute processing institutions in the democratic and rural system of India. The paper also focuses on the development of Panchayati Adalats and Panchayati Raj in Jammu and Kashmir with particular reference to 73rd Amendment Act and Article-370.

Keywords: Panchayati Adalat, Halqa Panchayat, Nyaya Panchayat, Panch, Sarpanch, Dispute, Justice, Act, Amendment, Civil, Criminal, Samvt, Rural.

Introduction

Panchayati Raj and Panchayati Adalat in Jammu and Kashmir

The State of Jammu and Kashmir has its own unique history as far as Panchayati Raj is concerned. The State has witnessed fluctuating fortune with regards to democratic process as well as democratic functioning of the institutions in the post Independence period. The Panchayati Raj system might have suffered set back in other states of India as well but in the Kashmir context, it has entirely different connections and dimensions.

There are some books and articles which focus specifically on the Panchayati Raj Acts in J&K. Article by Riyaz Punjabi (1990) talks about the Jammu and Kashmir Village Panchayat Regulation No. 1 of 1935 A.D. during the British period. While as in the rest of the country the Panchayati Raj system passed through various phases, in the State of J&K it was passed only in 1935 when the first J&K Village Panchayat Regulation No. 1 of *Samvat* 1992 was promulgated by Maharaja Hari Singh. The Preamble of the Act states, "it is expedient to establish in Jammu and Kashmir State the village Panchayats to assist in the administrative, civil and criminal justice and also to manage the sanitation and other common concerns of the village". It clearly shows that the essence behind the promulgation of this Act was not to promote Panchayati Raj in the State in letter and spirit but to use Panchayats as an extended arm of the Government for judicial and civil administration.

This Act was limited in its objectives and elitist in nature. There was no resemblance of a democratic character. The Act made provisions for the elections of Panches numbering 5-7 by simple show of hands. One among the Panches was expected to be nominated by the Panchayat Officer (*Wazire-e-Wazarat*). This Act also laid down tough qualifications for the voters and for the Panchayats, (Punjabi 1990; Bhushan 2008: 134). M. Aslam noted in his work that the state of Jammu & Kashmir at



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that point of time was in the grip of economic and educational backwardness. Keeping literacy level and economic well-being of the voter as the yardstick for participation in panchayat elections only helped the rural elite owing allegiance to rulers to use these institutions to their advantage. An analyses of the main functions assigned to the Panchayats reveals that out of a total of 58 provisions of the Act, 47 dealt with judicial functions. The non-judicial functions of the panchayat mainly included supervision, construction and maintenance (Aslam, 1999). At the village level, disputes often arise over petty issues. Even though initially few people may be involved, petty disputes if unresolved become bigger and start involving more and more people. Sometimes civil disputes take a violent criminal turn. Such unresolved disputes over a period of time may pose a threat to social peace and order, besides putting a strain on the criminal and civil justice system. Panchayati Adalat is a village judicial system which seeks to prevent the occurrence of disputes and resolves existing disputes at village level itself through people's participation. This is all the more possible in view of the rich spiritual and social reformist ethos of India.

The history of Panchayati Raj, in its present form in Jammu and Kashmir, can be traced back to the promulgation of the Jammu and Kashmir Village Panchayat Regulation No.1 of *Samvat* 1992 i.e. 1935 A.D. The Regulation is popularly known as Panchayat Raj Act, 1935. Consequently, the Department of Panchayat was established in the state in the year 1936 and was recognised several times in pre-independent and last in 1958 (Bhushan, 2008: 134).

An analysis of the main functions assigned to the Panchayat reveals that out of a total of 58 provisions of the Act, 47 dealt with judicial functions. According to the Act 1935 the Panchayat Officer might constitute a Panchayat for one village or a number of villages in accordance with rules made by the Government. No municipal or town area or cantonment could be included in Panchayat (Ibid). The regulation provided for election of Panches numbering five to seven. Of these, one panch was to be appointed by the Panchayat officer or the Wazir-e-Wazarat and the rest were to be elected by a show of hands. Generally, the voting was held by show of hands in a general meeting of voters of the area. Several villages were clubbed to form one Panchayat. The Sarpanch of Panchayat was to be elected from amongst the Panches (Punjabi, 1990:38).

The qualification prescribed under the Act for a voter as well as the person seeking election to a Panchayat is that the person should be a hereditary state subject, should be resident of rural area, was not insane and was of 21 years old, possessing any kind of property worth one thousand rupees. He should be tax payer with a minimum tax liability of five rupees and minimum annual income of seven hundred rupees. Academic qualification was also stipulated as

A precondition for becoming a voter or contestant in Panchayat election (Ibid). A Panch held office for three years unless he was removed from his post earlier by the Panchayat Officer before an authority appointed to hear such appeals. The Government might suspend Panchayat for misconduct or negligence of duty. There must be a

quorum of at least half the number in every meeting of the Panchayat (The Jammu and Kashmir Village Panchayat Regulation No. 1 of *Samvat* 1992, 1935A.D).

The main function of the Panchayat was judicial. Under the Act 1935 Panchayat were empowered to try suit for the recovery of movable property or cash not resulting from a central effecting rights over immovable property for the recovery of damages for misappropriation or without injury to the property, provided that the value of suit did not exceed rupees 25, certain classes of suit had however, been excluded from the cognizance irrespective of value of the subject matter of the suit. The Panchayat had also been given power to take cognizance of certain minor offences under the Ranbir Panel Code, the Cattle Trespass Act of *Samvat*, 1977 (1920A.D.) and some other Acts. The maximum punishment which a Panchayat could pass was payment of twice the amount of actual damage suffered by the plaintiff or a fine of ten rupees.

Under section 65 of Act 1935, a Panchayat was authorized to levy with the previous sanctions of the Revenue Minister and once in any year a fare which was a simple fraction or a simple multiple or the Chowkidar cess from persons who pay the said cess in order to raise funds to perform any of its compulsory duties under the Act or a duty which it was ordered by the Government to perform. Under section 65, a Panchayat under its jurisdiction could levy such taxes as it deemed necessary for the benefit of the village or villages, with the previous sanction of the government and subject to the rules made in that behalf. A resolution imposing such a tax must be passed by at least half of total membership of the panchayat (Ibid: 136).

The duties of the Panchayat included functions like construction, improvement and maintenance of bridges and roads and disposal of drainage water and sewage, construction and maintenance of source of water, supply and reservoirs of water, establishment and maintenance of burial and burning grounds, elementary education, cleaning of streets, provisions of latrines, maintenance of public libraries and the maintenance of markets (Ibid: 137).

A Panchayat Officer or any person duly empowered by him might ask a panchayat to submit its record for examination. Under section 70 of the Act 1935, the Panchayat Officer was empowered either on the motion of the panchayat or otherwise: To suspend the power of trial of the panchayat in respect to any civil suit or criminal case; to declare void any proceeding of a panchayat at any stage and to cancel or modify any order or decree passed by the panchayat (Ibid).

The Panchayat Officer thus exercised extensive powers of control and supervision over the Panchayats. With the approval of the government the panchayat could impose taxes. Besides the government might order a panchayat to perform any duty or might order it to help any government official in the discharge of his duties in an area under its jurisdiction. Since 1937 by the creation of separate department of panchayat and rural development a great fillip had been given to the functioning of the panchayat (Report of the Rural Urban Relationship

Committee, Vol. II, Govt. of India, New Delhi, 1978, p. 41). Besides, to decide petty cases civil and criminal, Panchayats also functioned as village organisations to improve the physical, moral, social and cultural condition of the village community. Panchayats not merely dealt with petty cases both civil and criminal, but also devoted their energies to the work of rural reconstruction within their respective jurisdiction. Cash contributions were also made by panchayat for uplift work in spite of providing free manual labour for construction of village road and sinking of wells and similar works (Ibid: 137).

Contributions had been received from village for purchase of community radio sets, for digging of wells, paving of village lanes construction of drains and linking of villages by fair weather road. Panchayat had shown good results in the domain of health and sanitation and anti-epidemic work. In number of cases cleanliness week had been celebrated and houses, compounds lanes, springs, well etc., had been systematically cleaned. Latrines and bathrooms were constructed and manure pits were dug in a number of villages (Ibid: 137).

With a view to educate the ignorant masses about the causes of common diseases and their prevention, well planned campaigns were also arranged in selection areas. The Panchayats also took a prominent part in the distribution of better poultry to the zamindars under directions of the agriculture department, the Panchayat and rural development also drew attention to the development of decaying village industries and programmes for adult education. Till 1939 about 180 village Panchayats with jurisdiction extending to about 1400 villages had been established. The Panchayats in the villages created a sense of cooperation and reduced the cost of litigation among them. In a number of places village libraries had been established and to keep villages abreast with the time, the department was circulating a monthly magazine in Urdu called *Dehati Duniya* (Ibid: 138).

Besides the department has also built tanks and made other arrangement for water in *kandi ilaqa* (barren land) of Jammu Province. In Kashmir it made proper water arrangements at places which depended on river water and were likely to suffer from infection which was dangerous at the time of epidemics. A cleanliness week was generally celebrated by every Panchayat to improve the sanitation of village and during that village and its surrounding were systematically cleaned to make the village alive to need of cleanliness (Ibid:).

Aims and Objectives

The aim of the study for the paper is to understand the evolution of Panchayati Raj and Panchayati Adalat in the state of Jammu and Kashmir and comparative even before Independence and after Independence. The study has also reflected the effects of Article 370 with special reference to 73rd Amendment Act.

It also envisage as to how far Panchayati Raj Act and Rules realized in practice despite the demand of Public and Panchayat functionaries to implement 73rd and 74th Amendment in the Act also in the state of J&K so as to allow more and more executive

powers of Panchayat for the benefit of rural public at large.

Amended Act 1941

The Act of 1935 was amended in 1941. The amended regulation covered a wide range of subject. The Panchayats were delegated the power to maintain all public roads, movable and immovable public properties and other structures in the villages. They were also given powers to levy taxes and generate resources for the development of the village, besides construction and maintaining public roads, bridges, wells, ponds, water resources, etc. regulation of sites of slaughter houses and examining and inspection weights and measures was also brought under the Panchayat's control.

Post-1947 Scenario

The post-1947 period witnessed many new developments in the State. The National Conference came to power in March 1948. At that point of time, the development scenario of the State was characterized by economic stagnation and educational backwardness. The Jagirdars and Chowkidars had accumulated large chunks of land through manipulation. The majority of the people were impoverished. In view of this situation, abolition of landlordism became the top priority of the Government. It resulted in the introduction of Big Landed Estates Abolition Act, 1950. This was a landmark in the history of J&K as it was the first experiment of its kind in land reforms in the subcontinent. It was also a step towards social justice. The introduction of this Act brought about appreciable changes in the socio-economic scenario of the State. In quantitative terms, 4.5 lakh acres of land held in excess of 22.7 acres (excluding orchards) were expropriated from as many as 9000-odd land owners. Out of this ownership, right of over 2.31 lakh acres of land was transferred to the cultivating peasants. All these measures created a conducive environment for reactivation of the Panchayati Raj system in reshaping the rural economy in the State (Aslam: 1977; Bhushan 2008: 160).

Village Panchayat Act of 1951

The Panchayat also made great contribution to the construction work for the benefit of the village but was restricted in scope to meet the requirement of rural development. The Act was therefore revised in 1951. The Act of 1935 as amended in 1941 was replaced in 1951 by Act V of *Samvat* 2008, according to which a Panchayat was to cover five to seven villages which constituted a revenue *halqa*. The majority of the Panchayat members were to be elected on the basis of adult franchise by show of hands. However, rules also provided for vote through the ballot. The Act had also empowered the Panchayat Officer to nominate some members. Members of Panchayat were to elect the Chairman of the Panchayat, called the Sarpanch. Under the Act of 1951 the Panchayat had to perform administration, development, civic and judicial duties. At that time 540 Panchayat had been re-established in the state and by March, 1954 the figure rose to 751, covering 4774 villages. The Act had provided for a Panchayat Board for each Tehsil with certain specifically judicial and development functions. This Board was expected to establish a judicial committee for deciding cases.

Drawing up of plans for improvement of communications and irrigation facilities, providing stud bulls for improvement of cattle breeds and distribution of improved seeds were also among its functions. A special feature of the Act was the provision for joint committee of Panchayats, which were empowered to perform mostly developmental functions (Mathew, 1998: 89).

The Jammu and Kashmir Village Panchayat Act -1958

The Act also provided for establishment of 'Panchayati Adalats' apparently to decentralize administration of justice. The Government could remove any member elected to the Panchayati Adalat, if he was found to be either guilty of misconduct in the discharge of his duties or incapable of performing any of his duties (Mohammad, 1995). But for success in a decentralized programme it is not that functions, finances and powers must be decentralized, but also certain attitudinal, behavioural and cultural conditions conducive to decentralization have to be built up. This culture of decentralization has to grow in strength and take deep roots in the country to successfully resist the pressure for evolution through time. But action so planned and purposeful actions have to proceed much ahead of times (Arora, 2009: 35).

Performance of Panchayat Courts since 1941 A.D.

The total number of panchayats was 4375 at the close of 1942 A.D. The number of cases instituted in Panchayat Courts was 18501 (5532 criminal and 12969 civil). The 13630 cases (4640 criminal and 8990 civil) were disposed of. The total value of all suits that came up before the Panchayat Courts was Rupees 220388 during the second half of 1941 A.D. and Rupees 600000 during 1942 A.D. Most of the cases were decided by compromise between the parties. The number of cases of revision applications filed against the decision of the Panchayat Courts was 266 during the second half of 1941 A.D. and 1154 in 1942 A.D. of the former were disposed of finally, and of the latter 587 were decided (Bhushan, 2008: 140-146).

In the year 1945 A.D. the number of village served by panchayats were further raised to 4988. Thus the number of cases increased and cases instituted in the Panchayat Courts was 85896 (62264 civil and 23632 criminal). Out of those 76586 cases, 56793 civil and 19793 criminal were decided. The number of applications for execution of decrees was 26793 of which 23987 were disposed of (Ibid.).

To ensure better administrative and more effective control over the panchayats, in 1950 A.D. separate Panchayat Officer was given for Jammu province. So re-constitution of the panchayats was also started and in 1950 A.D. there were 672 Panchayats in J&K, which decided 3787 criminal cases and 3052 civil cases in the Panchayat Courts. In 1955-56 numbers of panchayats in Kashmir valley were 373 when 9310 cases instituted and 762 cases decided in Panchayat Courts. In Jammu province there were 386 panchayats and these Panchayat Courts decided 1580 cases but there is no detail of the cases instituted (Bhushan, 2008: 140-146).

Panchayati Raj Act of 1989

As a sequel to the efforts to revive the process of democracy at the grass root level, the State Government repealed the Jammu and Kashmir Village Panchayat Act, 1958 and replaced it by the Jammu and Kashmir Panchayati Raj Act 1989. This Act was described as a radical step as it aimed at promoting and developing the Panchayat Raj system in the state as an instrument of vigorous local self government. The full involvement of the people was proposed to be secured through direct election of the panches and sarpanches and that of the Chairperson of the bodies at the block level, to be called the Block Development Councils. For the effective participation of the rural population in the development programmes and self governance, the Act had provided for three tiers Panchayati Raj system. These tiers are the Halqa Panchayat, the Block Development Council and the District Planning and Development Board (Shafi, 1990: 39). Thus the basic structure of the Panchayati Raj in the state of Jammu and Kashmir is almost similar to other states of India. The Act of 1989 provides for the establishment and constitution of the following authorities.

Panchayati Raj Structure

The three tier system of the Panchayati Raj Institutions in J & K is as follows: Halqa Panchayat Block Development Council District Planning and Development Boards (DPDB) and The Constitution of Panchayati Adalats under Section 48 of the Act.

Halqa Panchayat

The Halqa Panchayat similar to what is called Gram Panchayat in other states is the first tier constituted on the basis of geographical congruity and population. Each Halqa Panchayat population is restricted to 4000 in plain area and 3500 in the hilly areas. The Halqa Panchayat is regarded as the crucial tier of the entire process of democratic decentralization and is given wide ranging functions. Every Halqa Panchayat consists of such number of Panches as not less than seven and not more than eleven including the Sarpanch, as the prescribed authority from time to time. The Panchayat Act envisages that the Sarpanch shall be elected directly by the electorate of Halqa Panchayat in such a manner as may be prescribed. The Naib-Sarpanch shall be elected by the Panches of the Halqa Panchayat from among themselves at the first notified meeting of the Halqa Panchayat after its constitution. The Panches shall be elected from the constituencies delimited by the prescribed authority in accordance with rules. The term of office of the Sarpanch, the Naib-Sarpanch and every Panch of the Halqa Panchayat shall be for a period of five years from the date of its constitution (J & K Panchayati Raj Act-1989, Section-5).

With minor exceptions, the disqualification for membership of the Halqa Panchayat was the same as those prescribed in the 1958 Act. If in the opinion of the Government a Halqa Panchayat is not competent to perform its functions or if it is persistently defaulted in the performance of its duties as laid down in the Act, it could by notification supersede such Halqa Panchayat. However, no order under the provision of the Act could be passed unless the Halqa Panchayat had been given a show cause

notice. The period of the suppression shall not exceed six months during which the elections shall be held. (Ibid: Section-9)

As per the provision of this Act, the Halqa Panchayat had a wide range of functions relating to every aspect of realities. These ranged from development of agriculture, social forestry, marketing of agricultural produce to regulations of fairs and festivals and preparation and implementation of poverty alleviation and employment generations scheme. The Halqa Panchayat was also to be involved in the implementation of the scheme of universalization of elementary education and other educational programmes. The Halqa Panchayat has power to acquire, hold and dispose of the property and enter into any contract in accordance with the laws and rules in force (Ibid Section: 12-13).

Every Halqa Panchayat was to have a fund to be called the Halqa Panchayat Fund which was to comprise taxes and fee levied by the Panchayat, proceeds from the property and enterprises run by it, and court fee, fines compensation, elevation and contribution from the public for works undertaken by it. Proceeds of the sanitation cess collected by the government area, grants from this government for general purpose on per capita basis and also for specific function, loans from the government financial institution or other agencies approved by it, all other income of Halqa Panchayat and such grants as might be assigned to it by the government keeping in view the topography and backwardness of the area, also formed part of the Halqa Panchayat fund (Ibid Section: 14-21).

Block Development Council

The Block Development Council is the middle tier and consists of a Chairman, all the Sarpanches of Halqa Panchayats and Chairman of the marketing society. The Chairman of the Block Development Council is elected in an indirect election. An electorate comprising of Panches and Sarpanches of Halqa Panchayat in a Block elects one among them as a Chairman to the Block Development Council for a period of five years. If the prescribed authority was of the opinion that women or Scheduled Castes or any other section were not represented in the Block Development Council, it could nominate not more than two persons to be members thereof. Every Block Development Council is to have a Vice Chairman elected by its members from amongst themselves.

The Block Development Council was entrusted with many functions. It was assigned the functions of construction; maintenance and supervision of inter Halqa Panchayat communication system. The Council provides administrative and technical guidance to Halqa Panchayat and review their work. Among other functions the Council undertakes measures for effective supervision over plans relating to agriculture, rural development animal husbandry, social forestry, education and public health, undertaking measures for effectual supervision and monitoring of various developmental programmes which have been undertaken by the Halqa Panchayat (Section 27-34).

District Planning and Development Board

Each district was to have a District Planning and Development Board comprising the Chairpersons

of the Block Development Councils of the district, the MPs representing the area, the MLA representing the area within the district, chairperson of the town area committees in the district and the President of Municipal Council. From amongst its members, the Chairperson of the District Planning and Development Board was to be nominated by the government. The Vice Chairperson was also to be elected by the members from amongst themselves. No government servant could be elected as Vice Chairperson of District Planning and Development Board. The Chief executive of District planning and Development Board was to be District Development Commissioner and he would be assisted by the district level heads in discharging his functions.

The District Planning and Development Board was to consider and guide the formulation of development programmes for the district and indicate priorities for various scheme and consider issues relating to the speedy development and economic upliftment of the district. It was to periodically review the progress and achievements of developmental plans and schemes and make recommendations as it consider appropriate and to function as working group for formulation of period and annual plans for the district. The Board had to formulate and finalize the plan and non-plan budget for the district, lay down the policy guidelines for the Block Development Council and Halqa Panchayats, approve the budget of the Block Development Councils, supervise and coordinate their work, undertake special measures for alleviating poverty and employment generation extend assistance to halqa Panchayat in their later functions and duties as might be assigned or entrusted to it by the Government from time to time (Ibid Section: 45-47).

Panchayati Adalat

The Jammu and Kashmir Panchayati Raj Act, 1989 envisages a Panchayati Adalat for every Halqa which consists of contiguous number of villages as determined by the Government Section 48 (1). The Adalat shall comprise of five member nominated by the prescribed authority out of the panel prepared and recommended by the Halqa Panchayat out of its electorate Section 48 (2). The term of members of the Adalat is five years section 48 (3) (Jacob and Mehta, 1990: 73-74). From amongst themselves the members of the Adalat shall elect the Chairman of Adalat. If they fail to elect Chairman within 30 days the prescribed authority will nominate the Chairman under Section-50. The Secretary of Halqa Panchayat will Act as the judicial clerk to the Adalats under Section 51 of PR Act-1989.

The Panchayati Adalats enjoy both criminal and civil jurisdictions. The criminal jurisdiction is extensive and covers a substantial range of offence under Ranbir Panel Code *Samvat* 1989 as well as other offences under different Acts such as Dowry Restraint Act, 1960; Cattle Trespass Act, 1977; J&K Vaccination Act, 1967; Public Gambling Act, 1977, and the Prevention of Juvenile Smoking Act, 1986 etc. It has jurisdiction to try offences such as impersonation of public servant, criminal trespass, house trespass, public nuisance including pollution of water, mischief theft, misappropriation and negligent driving on a highway outrage etc. The Panchayati

Adalat is authorized to levy fine up to Rs. 1000 but it has no power to sentence offenders to imprisonment. The Adalat has given power to pay compensation to the victims of offences out of the fine imposed on the offender. The Adalat is also authorized to order the complainant to compensate the accused upto Rupees 200 in case of false frivolous or vexatious complaints. It has the powers to discharge a youthful offender (not over 15 years of age) after admonition (Ganga Ram, Report on State Administration Jammu Archives 1942: 219).

Panchayati Adalat is empowered to take steps to reach an amicable settlement of disputes which are in consonance with mega Panchayat ideology. To make Panchayati Adalats more effective, the civil jurisdictions may be enlarged to cover specifically non payment of wages and violations of minimum wages Act, dispute arising out of the use of forest land by local inhabitants, dispute regarding use of common parties and disputes concerning use of water from irrigation channels. A Panchayati Adalat shall not be competent to impose on any person convicted of an offence tried by it, any sentence other than a sentence of fine not exceeding one thousand rupees. Despite the measures taken for improving the quality of Panchayati Adalat there should be impartiality, fairness in decision process and equality in enforcement of decrees and sentences of socio-economic status of the parties concerned. Moreover, the members of Adalat must be trained according to law (Jacob and Mehta 1990: 51&75).

Relevance of the 73rd Constitutional Amendment Act 1992 For J&K

Gandhiji famously said "*India lives in its villages*" and advocated for a 'village based political formation' i.e. Panchayati Raj (Rule by the Panchayats) and *Gram Swarajya*. (Villages ruled independently). Gandhi further said "True democracy could not be worked by some persons sitting at the top. It had to be worked below by the people of every village". Therefore we have Article 40 of our Constitution which says "The State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government." Subsequently, the Balwant Rai Mehta Committee (1957) recommended a three-tier Panchayati Raj system in the form of Gram Panchayats (village level), Panchayat Samiti (block level) and Zilla Parishad (district level). Some State governments took spirited measures to establish these Panchayati Raj systems while most turned a blind eye to the Committee's recommendations. Even the subsequent Ashok Mehta Committee (1978) failed to revitalise the idea of *Gram Swarajya*, categorically favoured the district as a pivot of local administration.

In order to improve the active participation of rural people in the process of development and involvement in decision making and decentralized planning, the Government of India has made 73rd Constitutional Amendment in 1992 to provide constitutional recognition to Panchayati Raj Institutions and delegating important powers to these Panchayats in the Eleventh Schedule.

The enactment of the 73rd Constitutional Amendment Act came into force on 24th April 1993.

The constitution through 73rd amendment, visualizes Panchayats as institutions of local self Government, it is subjected to the extent of devolution of powers and functions to the will of the state legislature. For the first time, self-government is located constitutionally at the Panchayat level. Locality has become the basis of planning. The Gram Panchayat is entrusted with the responsibility for planning that is done by the people through *gram sabha*. The amendment provides decentralized governance at the district and even lower level. It has created people-centred institution at the district, block and village level. The amendment devolved a package of powers and functions, to PRI. The eleventh schedule lists out 29 subjects, such as provision and maintenance of civic amenities, public hygiene, maintenance of public works, primary education, agricultural production, rural industries, primary health care, women and child welfare etc., to be transferred to Panchayat Raj bodies. The Panchayati Raj institutions are responsible for the planning and implementation of programmes related to social justice and economic development as may be entrusted to them by the government.

With the introduction of the 73rd Constitutional Amendments, the decentralization has been democratized and the scope of democracy has expanded to include the women, OBCs and *Dalits* at grass root level. On the other hand to look into the matter to the relevance of the 73rd Amendment for the Tribal and Scheduled areas also, a Committee under the Chairmanship of Dileep Singh Bhuria, popularly known as 'Bhuria committee' was constituted in June 1994.

Bhuria Committee submitted its report in February 1995 with far reaching recommendations on the law to extend the provisions of part IX of the Constitution to the Scheduled Areas. A stipulated deadline of one year was fixed to complete the process of enacting the legislation in the states. Most of the States did so and also held elections subsequently. But the 73rd Amendment to the Constitution did not come into force in the state of Jammu and Kashmir in view of the special status of Jammu and Kashmir under the Article 370 of the Constitution of India which has given a separate entity to this State.

It is necessary to quickly look at article 370 before moving on to understanding the constitutional provisions with regard to PRIs in Jammu and Kashmir. At the time of 'Independence' when the princely states were being accessed in to the Indian Territory, Jammu and Kashmir was in a unique position. The then Maharaja Hari Singh had offers to either join the Indian Union or Pakistan and the king decided to get accessed to India. Then, Nehru asked Sheikh Abdullah to take over as the state had a special position of centre not interfering in to the affairs of the state except in matters of Defence, Foreign Affairs and Communications.

Article 370 of the Indian Constitution, which is of a temporary nature grants special status to Jammu and Kashmir. This article specifies that except for Defence, Foreign Affairs and Communications, the Indian Parliament needed the State Government's concurrence for applying all other laws. Thus the state's residents lived under a separate set of laws,

including those related to citizenship, ownership of property, and fundamental rights, as compared to other Indians. Even J&K have its own 'Ranbir Penal Code' instead of Indian Penal Code applicable in the country except in the State of J&K. Article 370 therefore provides for greater sovereignty for Jammu and Kashmir as far as the matters of the state are concerned. Therefore even in the case of 73rd amendment that lays down principles for devolution through Panchayati Raj Institutions the state has the prerogative to include or exclude provisions of this amendment as per its needs.

The Jammu and Kashmir State enacted J&K Panchayati Raj Act-1989 with its provisions regulated by Panchayati Raj Rules-1996. Under these provisions the elections to the Panchayati Raj Institutions were held in the year 2001 after a gap of more than 23 years. The State Government incorporated some of the provisions of the 73rd Amendment related to the Panchayati Raj or Local Self Government with certain modifications and not in total.

The 73rd Amendment 1992 was regarded as the most significant step in the direction of granting Constitutional status to the PRIs providing uniformity by making compulsory three-tier system, regular elections, more powers and financial autonomy besides granting adequate representation to women and scheduled caste and scheduled tribes.

The following are some of the important salient features of the Constitutional (Seventy third) Amendment.

1. In all states, there shall be Gram Sabha (GS) in each village, comprising all eligible voters in the village, exercising such powers and performing such functions at the village level as the legislature of a State may provide by law.
2. Panchayats shall be constituted in every State at the village, intermediate and district levels, thus bringing about uniformity in the Panchayati Raj structure. However, the States having a population not exceeding 20 lakh have been given the option of not having any Panchayat at the intermediate level.
3. While the elections in respect of all the members of Panchayats at all the levels will be direct, the elections for the post of chairman at the intermediate and district levels will be indirect. The mode of elections of Chairman to the village level has been left to the State Governments to decide.
4. A uniform term of five years has been provided for the PRIs and in the event of supersession elections to constitute the body should be complete before the expiry of six months from the date of dissolution. Elections will be held under the supervision, direction and control of the State Election Commission.
5. Reservation of seats for SCs/STs has been provided in proportion to their population at each level. Not less than one-third of the total number of seats reserved for various categories shall be reserved for women belonging to the concerned reserved category and such reservation will be on rotation basis by drawing of lots to different constituencies in a Panchayat. Similar

reservations have been made in respect of the office of the chairman also.

6. PRIs will receive finances from State Government in the form of grants. The State Legislatures have been given the power to authorize the Panchayats to levy and collect taxes and fees as may be authorized by the Government. Every five years the State Finance Commission will review the financial position of Panchayats and recommended principles governing distribution of taxes and grants-in-aid to PRIs.
7. Besides providing for finances, the Act also indicates a set of items in the 11th schedule of the Constitution which may be entrusted to the Panchayats in addition to any other schemes for economic development and social justice that may also be entrusted to them by the State Governments.
8. With a view to ensuring continuity it has been provided in the Act that all the Panchayats existing immediately before the commencement of this Amendment Act will continue till the expiry of their duration unless dissolved by a resolution to that effect passed by the State legislature concerned.
9. The State Legislature should bring in necessary amendments to their Panchayat Acts within a maximum period of one year from the commencement of this Amendment Act so as to conform to the provision contained in the Constitution (Kaushik, 1993: 21-25).

The 73rd Constitutional (Amendment) Act, 1992 is only a general guideline for good governance for the PRIs in India. It grants Constitutional status to PRIs, provides uniformity by making three-tier system, regular elections, more financial autonomy etc. However, the major work has been left for the State Governments to respond and implement its provisions as quickly and effectively as possible (Chauhan, 2001: 23).

Delegation of Powers to Elected Panchayats; Order (No. 21RD) of 15 January 2002, Government of J&K

The Order delegate powers to the Halqa Panchayats (HPs) to exercise functions within their jurisdiction as provided under Section 12 of the 1989 Act and Rule 48 of the Jammu and Kashmir Panchayati Raj Rules 1996.

1. The Order accords 'sanction' to HPs to prepare plans for development of respective Halqas and undertake measures for implementation of development plans. HP will execute works, sanction projects, approve list of works, determine mode of payments and ensure that wages are paid within a fortnight. In doing so, HPs will stick to guidelines of Central and State Governments and ensure that detailed estimates are prepared and technically obtained from Rural Engineering Wing.
2. The Order gives authority of 'administration and supervision' to the HPs on the following subjects: primary schools, health and sub-centres, anganwadi centres and social welfare training centres, sheep extension centres, veterinary centres, seed distribution centres, field nurseries of horticulture department, minor irrigation

- schemes, minor water supply schemes, village wood lots and strip plantation.
3. It accords powers to the HPs to 'specifically deal' with 'problems' under the following subjects: soil conservation, water management, social forestry, rural industrialization, agriculture, sheep/animal husbandry, sanitation, health and 'other welfare programmes'.
 4. The HPs have the power to: (a) regulate buildings, shops and entertainment houses, (b) check offensive trades, (c) construct and maintain slaughter houses, (d) regulate sale and preservation of fish, vegetables, food and other perishable articles, (e) regulate sale and preservation of meat and processing of skins/hides, (f) regulate fairs and festivals.
 5. The Order vests in the HPs and the power to 'prepare and implement' special poverty alleviation and EG programmes 'generated through and besides' programmes like Integrated Rural Development Programme, National Rural Employment Programme, Rural Landless Employment Guarantee Programme and Housing for SC/ST/OBC.
 6. HPs will be the authority on all matters involving regulation, supervision, maintenance and support to ensure efficient discharge of above functions.
 7. Panchayat members will be given an 'orientation course' to familiarize them with their powers and responsibilities within 3 months.
 8. Each department will issue 'necessary directions' regarding modalities on supersession of the staff and utilization of available budget for these schemes.
 9. Allocation of resources for Panchayats has been made effective from 01.04.2002.

(Source: Government of Jammu and Kashmir, Civil Secretariat Rural Development Department, 2002).

How Far 1989 Act Could be Realized in Actual Practice

The Jammu and Kashmir Panchayati Raj Act, 1989 had many flaws with enough scope for improvement. When compared with the 73rd Amendment, the State Act appears to be quite retrograde. Unlike the 73rd Amendment of the Constitution of India, which provides that all the seats in the Panchayat shall be filled by persons chosen by direct election, the Jammu and Kashmir Act provides for nomination at every level i.e., the Halqa Panchayat, the Block Development Council and the District Planning and Development Board. It is only at the level of Halqa Panchayat that the principle of direct elections is applied. However, even in Halqa Panchayat there is provision for nomination (Chowdhary, EPW, May 19, 2003). Another major weakness of the Act of 1989 is the lack of financial autonomy of the Panchayat. There is no machinery for allocation of funds directly to the Panchayat Institutions, which might adversely affect the financial status. All the funds provided by the Government or any other agency meant for the development of the district, flow through the District Planning and Development Board as per the district Plans.

Despite these drawbacks of 1989 Act, the State Government is trying to overcome the weakness of the Act. By the Order (No. 21 RD) of 15 January

2002 powers were delegated to the Halqa Panchayats to exercise functions within their jurisdiction as provided under Section-12 of the Act 1989 and Rules 1996. The Order gives powers of preparing, implementing, regulating and executing of various development plans to Halqa Panchayats among other things (J&K Panchayat Conventions, 2003, ISS, 2004).

The Jammu and Kashmir Panchayati Raj (Second Amendment) Bill 2003 was passed by the J&K Assembly on 17th December 2003 with the objective to strengthen the representative character of the Halqa Panchayats and also to ensure effective participation of women and other weaker sections in the functioning of grass root level democratic institutions. Thus among other things proposed, the Bill provided for one-third reservation of seats for women including those belonging to SC and ST in the Halqa Panchayats. Accordingly, the Jammu and Kashmir Panchayati Raj (Second Amendment) Act No.II of 2004 dated 5th January, 2004 and Jammu and Kashmir, Civil Secretariat, Rural Development Department, Notification, Srinagar, the 18th June, 2004 as SRO-181; the Panch seats reserved for the Scheduled Castes and Scheduled Tribe, and Women in every Halqa Panchayat determined and allotted by rotation after every general election. This Amendment does not talk about reservation of seats for Sarpanches like in the 73rd Amendment Act, which seems to be a flaw and retrogressive step as it is Sarpanches and his/her able guidance that lead to the success of Panchayat and development of the village.

There are many other weaknesses in the State Acts when its contents are compared with the provisions made in the 73rd Constitutional Amendments Act, so the state shall take steps to organise village Panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government. Almost all the states in India have completed the process of enacting fresh legislation on strengthening the PRIs as per the provision of the Act. As well as eleven states pushed through fresh legislation in 72 hours, some of them even in early hours of April, 1994 to beat the stipulated deadline of April 23, 1994, the day Panchayats became the part of the Indian constitution. However the 73rd Constitutional (Amendment) Act is not applicable to Jammu and Kashmir due to special status under Article 370. However, it did contain provisions for future extension of the Act. But mere legislative enactment does not ensure effectiveness and visibility of the PRIs in the State. What is more important is their operationalisation.

The 73rd and 74th Constitutional Amendment Acts became law more than two decades ago but the implementation of these amendments in the different states has been uneven, to say the least. The cause of implementation has also been marked by several controversies and disputes mostly political but significantly, legal as well. The Government of Jammu and Kashmir who had been pioneer in the true implementation of the Panchayati Raj in the State since 1935 A.D. also became reluctant and lagged behind to empower the Panchayati Raj Institutions, even after implementation of Panchayati Raj Act-1989 and Panchayati Raj Rules-1996 in which many

provisions made/ substituted by Different Acts and SROs passed in the Assembly from the year 1997 to 2003 [Act amended up to January, 2004 by the Rural Development Department Jammu and Kashmir (Numbers and dates of all such Acts and SROs quoted in the Act)].

Demand of Public to implement 73rd and 74th Amendment Act in the State

People now sought to meet the demand for autonomy by offering concessions at the lower level of administration giving powers to Panchayats in rural areas as a sequel to the efforts to revive democracy at the grass root level. So After the successful elections of Panchayats in J&K in 2011, there is a continuous demand of Panches, Sarpanchs, public at large and stake holders to implement the provisions of 73rd and 74th Constitutional Amendment Acts and establishing Panchayati Adalats. In support thereof the paper cutting of the latest News Papers (published from Jammu) are self explanatory; the extracts of some News are elaborated below:

June 1 and 5, 2012

Chief Secretary (Govt. Of J&K) headed Committee finalised instruction manual of 14 Departments on June 1, as Chief Minister to review strategy chalked out for empowerment of Panchayats on June 5. Chief Minister Omar Abdullah today (June 5) reviewed the headway made on the implementation of Government Orders regarding the transfer of powers from various departments to Panchayati Raj Institutions. He said NGOs and experts in the field should be involved in the comprehensive training programme for Sarpanchs and Panchs. Omar received the status of constitution of State Election Commission for Panchayat Election and separate Finance Commission for these Institutions. He also received details of the roadmap for constitution of Block Panchayat Council and holding election for Legislative Council seats reserved for Panchayat Members.

June 7, 2012

Principal Secretary Planning and Development Department, B.B.Vyas today called upon the field functionaries to implement Government instructions with regard to devolutions of powers to the Panchayati Raj Institutions in letter and spirit enabling these ground level institutions to discharge their duties as per mandate. Vyas said that Government has already issued circular instructions with regards to devolution of financial powers to the PRIs

Aug 3, 2012

Minister for Rural Development, Law, Justice and Parliament Affairs, Ali Mohammad Sagar today said that there should be no delay in the release of funds to the PRIs by concerned 14 Departments with which PRIs have recently been empowered.

Aug 4, 2012

Minister Sagar today said that the empowerment of Panchayati Raj Institutions is a befitting reply to disruptive forces; who had earlier raised doubt about the success of PRIs in Jammu and Kashmir. In the convention, Officers of the Departments, Panchs, Sapanchs of the area were also present. Mr Sagar said that for augmenting the infrastructure of PRIs an amount of Rs. 285 crore has

already been released for construction of Panchayat Ghars and repairs/renovation of the already existing ones. Asking the officers to involve Panchs and Sarpanchs in various development programmes.

Aug 5, 2012

Addressing a Press Conference, Secretary Indian Youth Congress J&K, re-iterated its demand for implementation of 73rd and 74th amendments in J&K. The Panchayati Adalats have been debarred of true powers. The provision of social Audit through Gram Sabha is also missing in J&K Act. Efforts should be made in effecting the desired reforms and bringing the Act in line with 73rd Amendment and the Acts as in force in rest of the States of the country.

Aug 6, 2012

Member Parliament Chowdhary Lal Singh chaired a meeting wherein Panchs and Sarpanchs of different blocks of District Kathua participated. District Development Commissioner Kathua, Zahida Parveen Khan, exhorted upon the Officers to give due considerations to the panches and sarpanchs while making plans to execute development works in the Panchayats.

Aug 6, 2012

Minister for Rural Development Department and Panchayati Raj faced hostile panchs and sarpanchs as they disrupted the Panchayat convention against non-empowerment of Panchayats when the Minister said it was the commitment of the Government to empower the PRIs.

Aug 11, 2012

Pradesh Youth Congress (PYC) State vice-president has demanded 73rd and 74th amendments in the Panchayati Raj Act in the State. Submitting a Memorandum to D.C.Kathua today, said that Panchayat cannot be strengthen without making the proposed 73rd and 74th amendments in the State Act. The Sarpanchs and Panchs are given powers so that democracy could percolate up to the grass root level. PYC has launched a State wide campaign. The memorandum will be given to the Chief Minister through D.C.s and if the government will ignore their demand the PYC workers will come out on the roads and streets. They said that lot of resentment was brewing among the Panchayat's members over delay being caused to provide them full powers.

Aug 18, 2012

Pardesh Congress Committee has geared up its campaign for seeking implementation of 73rd and 74th amendments in the Panchayati Raj Act. Commencing this wide range campaign in which, they have repeated the same views as above expressed in the News on Aug 5 and 11, 2012.

Aug 21 to 30, 2012

Daily there are news in all the News Papers published from Jammu on the matter of 73rd and 74th constitutional Amendment Act. There was already apprehension of direct conflict of many political and non-political parties and agencies with the Government on roads and streets demanding implementation of the provisions in the 73rd and 74th Amendment Act and empowerment of Panchayats. Agitations are in full swing in almost all the towns and cities of J&K demanding implementations of the Acts, Empowerment of Panchayats and Social Audit through Gram Sabha. They stated that their agitation

will continue till their demands are fulfilled. There are no two opinions about the fact that the Central Act gave birth to the third generation of the Panchayati Raj in India. The main lacuna of the Act, it has been left it to the discretion of the state Government.

It is not mandatory on the part of the State Government to implement this because the word 'may' is used five times in this Act. Moreover, due to Article 370 of the Constitution of India, Part IX of the Constitution is not applicable in the State of Jammu and Kashmir. But as detailed in third chapter; public at large, Panches, Sarpanches have started agitation for the implementation of 73rd Amendment Act in the State and the Government has also taken some steps to implement another one tier. Recently Chief Minister Omar Abdullah announced holding of elections to Block Development Councils (BDCs) and directed the concerned departments to set the process into motion, complete formalities and hold the polls by December, 2012. BDCs are to be elected by Sarpanches and Panches. There were a total 143 Block Development Councils including 77 in Kashmir region (Ladakh included) and 66 in Jammu region (Source: Daily Excelsior, August 30, 2012). Mounting pressure on the Government by staging dharna, demonstrations, campaign in every city and town of the state has geared up the Government to implement 73rd and 74th amendment Act, three tier governance of Panchayati Raj in J&K and establishing Panchayati Adalats in all Halqa Panchayats.

Conclusion

In view of the above voice of the public at large, conscious efforts required to be made by the Government of Jammu and Kashmir to help the revival of Panchayati Adalats and Halqa Panchayats (by adding the characteristics of the 73rd Constitutional Amendments Act in the State Act-1989 and Rules-1996, as per demand of the Panchayats) to become the real institutions of self governance true to Gandhian sentiments, rather than mere agent of the Government executing some schemes. During the study of books on the subject, especially relating to the politics and administration of justice and the evolution of judicial system in J&K it is worth to quote the description given by Bhushan, "As said earlier Maharaja Gulab Singh inherited a kingdom. He was not a reformer but a founder and 'the present Jammu and Kashmir state is his monument'. He had hardly any time left for setting up an administration of justice; there was no court, nor any code of procedure for guidance. To administer justice was the duty of no one, yet everyone, who held any responsible post throughout the State, was responsible to administer it both in the civil and criminal cases" (Bhushan, 2008: 107). Though Maharaja Ranbir Singh gave a new touch to the judiciary and established regular court of justice with defined powers, later on judicial system was decentralized and Panchayats were given the Administration of justice in rural areas which proved to be a result oriented system in judiciary. Maharaja Hari Singh's government took a special care to see the administration of justice was cheap, expeditious and pure" (Ibid: 108-109).

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