Panchayati Raj Institutions in Jammu and Kashmir: With Special Reference to 73rd Constitutional Amendment Act

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Received: 02 August 2016, Accepted: 27 September 2016, Available online: 01 October 2016, Vol.1, No.1 (October 2016)

Abstract

The Panchayati Raj Institutions (PRIs) in India are the Prime instruments of decentralization at the grassroots level. They assume importance due to the need to contain the relentless demographic pressures and optimum use of scarce resources for development. They act as vehicles in carrying back to people the power that really belongs to them. Panchayati Raj, or local self-government, is an exercise in decentralization of administrative authority. Rural development has been massively a government supported process rather than the people-led process in India. To formulate and implement rural development programs an appropriate institutional structure is required. This need was met by the establishment of Panchayati Raj Institution (PRIs) in India. Further, the PRIs, being local self-governing bodies ensure, the opportunity for people’s participation and involvement in the formulation and implementation of rural development programs. Thus, the PRIs are entrusted with the task of promoting rural development in India. Panchayati Raj is created in all the States in India by the Acts of concerned State Legislature to establish democracy at the grass root level. It is entrusted with the duties and the responsibilities in the field of rural development. It was constitutionalized through the 73rd Constitutional Amendment Act of 1992. The Present study is an attempt to find out structure and Working of Panchayati Raj in Jammu and Kashmir. As it has been observed that 73rd Constitutional Amendment Act is not working in Jammu and Kashmir. The Panchayati Raj Institutions in Jammu and Kashmir State suffer both from structural as well as operational weaknesses. Unlike the 73rd constitutional amendment of Indian Constitution and the Model Panchayat Act, the Panchayats as per the State Act, are not democratically structured at all the three levels. While much of the problem of the powerlessness of Panchayats rests with the unwillingness of the parallel administrative and higher governmental structures to transfer real powers to the Panchayats, there is a structural problem in the Act as well. The PRIs in the state are not structured on the basis of federal principles. The paper will clearly give a full description of structure and working of Panchayati Raj institutions and their present problems in Jammu and Kashmir. Finally the paper will also make some suggestions and measures so that PRIs in Jammu and Kashmir can be empowered in a proper way and their grievances should be addressed at the earliest.

Keywords: Panchayat , decentralized , public rural development, local governance

1. Introduction

Panchayats have been the backbone of the Indian villages since the beginning of recorded history. Gandhi, the father of the nation, in 1946 had aptly remarked that the Indian Independence must begin at the bottom and every village ought to be a Republic or Panchayat having powers. Gandhi ji’s dream has been translated into reality with the introduction of the three tier Panchayati Raj system to ensure people’s participation in rural reconstruction. Panchayat literally means assembly (yat) of five (panch) wise and respected elders chosen and accepted by the village community. Panchayat or Panchayati Raj is a system of governance in which gram panchayats are the basic units of administration. It has 3 levels: village, block and district. The term panchayat raj is relatively new, having originated during the British administration. Raj. literally means governance or government. Mahatma Gandhi advocated Panchayati Raj, a decentralized form of Government where each village is responsible for its own affairs, as the foundation of India’s political system. His term for such a vision was .Gram Swaraj. (Village Self governance).It was adopted by state governments during the 1950s and 60s as laws were passed to establish Panchayats in various states.


2. Research Methodology:
In order to make an objective and systematic study of the problem analytical and historical methodology has been followed. Besides this, all the available sources, research papers, gazetteers, Journals periodicals, news papers and other relevant available sources have been examined and analyzed minutely in the proposed work. Internet information available on the subject has constituted a part of the literature entailed for the present study. Visit to the area of research was imperative so that the interaction with renowned administrative and political leaders, general public and students of the region has been used as first hand information to ensure objectivity and contemporary significance of the study. The information received by virtue of interviews and on spot field study has formulated desired conclusions related to the nature of problem. The conclusion has been drawn on the bases of this critical and fresh interpretation of the data.

The State of Jammu & Kashmir has its own unique history as far as Panchayat Raj is concerned. In the State of J&K it was only in 1935 when the first Village Panchayat was promulgated by the then Maharaja Hari Singh which stated, “It is expedient to establish in Jammu & 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”, However, 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 semblance 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). Besides, panchayat officer was empowered to evolve rules and regulations for the conduct of the election of panches. This Act also laid down tough qualifications for the voters and for the candidates seeking election to the panchayats.

The State of Jammu & Kashmir at 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. The act of 1935 was amended in 1941, which delegated the panchayats with the power to maintain public utilities like roads, bridges etc. examining and inspecting weights and measures and to levy taxes and generate revenue. Post 1947, Act-V of Samvat 2008 (corresponding to year 1951) replaced the amended Panchayat Act of 1935. The Act provided for administrative, developmental, civic and judicial functions by the Panchayat. Post-independence, as state of Jammu and Kashmir acceded to India and National Conference came to power. Part of it slew of reforms to better the lot of people especially in the rural areas, concern about the lack of people’s participation and need for devolution of power to lower levels through panchayats led to passing the Jammu & Kashmir Village Panchayat Act of 1958 and repealing the earlier Acts. The Act provided for the establishment of Panchayat Adalats to decentralize the administration of justice about the prescribed authority who were to determine the number of Panchs to be elected and/or nominated.

In the mid-1970s, the Government introduced an innovative developmental strategy, “the single line administration model”. The introduction of this innovative developmental strategy in the absence of any linkage to other institutional framework could not reinvigorate the Panchayati Raj System. Almost no endeavor was made to evaluate the possible problems and shortcomings so that suitable remedial action should have been taken. This realization led to the introduction of Jammu & Kashmir Panchayati Raj Act, 1989.

This Act provides for a 3 tier system (Village, Block and District level) for governance at the grass roots. The institutions thus created would be called Halqa Panchayat, Block Development Council and District Planning and Development Board respectively. Every Halqa Panchayat would have 7 to 11 Panches and a Sarpanch (who would lead the Halqa Panchayat). The Sarpanch and Panches would be elected directly by the people. There would also be another person by the name of Naib sarpanch and he is nominated by all the panches of a halqa panchayat. Naib sarpanch would perform the same duties as the sarpanch in the event of sarpanch not being in a position to fulfill his/her duties. Village level worker would be the secretary of the halqa panchayat.

The adoption of Jammu and Kashmir Panchayat Act 1989 was a pioneering step. However, elections to the Gram Panchayats were held in the year, 2011 after a very long gap. The elections have been completed for all the 4128 Gram Panchayats. Accordingly, 4128 Sarpanchs and 29719 Panchs have been elected. The Government in the General Administration Department issued Government Order No.1126-GAD of 2011 dated 22.09.2011 in which activity mapping of 14 departments has been done regarding the funds, functionaries and functions to be devolved on the Panchayats. Based on the activity mapping all the departments have issued elaborate guidelines in which the processes through which the devolution shall take place have been clearly delineated. A compendium of these guidelines has been translated in Urdu and Hindi. This has been printed in a book form and made available to the Panchayats. In order to ensure that the devolution is translated on ground, the Government has appointed Additional District Development Commissioners as Nodal Officers for coordinating
among various departments to ensure that the functions are actually transferred to the Panchayats. The process of devolution has started and many departments have started transferring their functions to the Panchayats. In addition the departments have already allocated funds to the Panchayats for various interventions. A budget supplement has been prepared in which 253.06 crores including 190.44 crores out of 13th Finance Commission have been directly devolved to the Panchayats. Since Panchayati Raj has had a chequered history in the State of J&K, therefore, even the basic infrastructure for the Panchayats is not in position. Out of 4128 Panchayats, 1788 Panchayats do not have own building. A programme of construction of Panchayat buildings has been started in the State and 1150 Panchayat Ghars have been taken up during the financial year 2011-12 and 2012-13. During the current financial year rest of the buildings shall be taken up. The funds for this purpose have come from 13th Finance Commission Grants and MGNREGA. For the Panchayat Ghars where no building is in place a provision of monthly rent @ 600/- per Panchayat has been made. An amount of 1.23 crores have been provided by the Planning Department for this purpose. In order to acquaint Panchayati Raj functionaries with their roles and responsibilities, a capacity building programme by way of providing foundation course was launched in the year 2011-12. A group of 440 trainers were identified from the Rural Development Department. Their capacity building was done by Institute of Management & Public Administration. Their further capacity building was done by the 5 SIRDs of Andhra Pradesh, Maharashtra, Kerala, Karnataka and Orissa. Training modules were developed in consultation with the experts from these SIRDs and on the basis of these training modules training was provided to all the Panchayati Raj functionaries numbering 33800 in the State. This programme has gone a long way in acquainting the elected representatives regarding their roles and responsibilities as envisaged in the Panchayati Raj Act. During the current financial year, the department shall provide a functional course to all the Panchayati Raj functionaries. A proposal for this purpose has been sent to Government of India for funding after the same was cleared by the High Powered Committee headed by Chief Secretary. In addition to this, PRIA, a national level NGO was associated for updating the training modules already developed by IMPA. In the current financial year’s capacity building programme all the Panchayati Raj functionaries shall be trained according to this module, in the processes involved in the devolution of powers so that they have a clear concept of devolution and they are able to effectively carry out their functions.

The Panchayats are already playing a role which has been assigned to them in the guidelines of the Centrally Sponsored Schemes. In case of MGNREGA, which is one of the ambitious schemes of its kind, the planning process as well as implementation has been devolved to the Panchayats. Similarly, under IAY, SGSY, TSC, the identification of beneficiaries has been left to the Panchayats. An amount of 1.00 lac has been provided to each Panchayat for taking up works of minor nature in their areas. The aim of providing such funds directly is to initiate the Panchayati Raj Institutions in the process of governance. An amount of Rs. 25000/- for each Panchayat has been provided for furniture/fixture to enable the elected representatives to operate from the office space. It has also been endeavor of the Government to provide dedicated staff to the Panchayats. Under the provisions of J&K Panchayati Raj Act, each Panchayat should have one Panchayat Secretary. But there is a gap of 1083 Panchayat Secretaries (VLW and equivalent). In order to address this issue the Government has sanctioned additional 1083 posts of VLWs. One Technical Assistant (Junior Engineer) has been appointed for 5 Panchayats to provide technical support for implementing the works programme especially under MGNREGA. Additionally one Gram Rozgar Sahayak is also being provided to each Panchayat to look after the works under MGNREGA. Besides, 143 posts of Programme Officers have also been sanctioned and the process of recruitment is under way. There will be one Programme Officer for each block who shall be exclusively looking after the works taken up by the Panchayats especially under MGNREGA. The State Act has already incorporated the features of the 73rd Amendment Act in the Indian Constitution, including State Election Commission. There is already State Finance Commission Act in vogue serviced by the Finance Department and its jurisdiction has been extended to the Panchayats also. The State Act contains the main features of the 73rd Amendment Act which include three tier Panchayat Raj System, the concept of Gram Sabha, reservation for SC/ST proportionate to their population and 1/3rd reservation for women, constitution of State Election Commission and Finance Commission and implementation of the developmental functions commensurate with the 11th schedule of the constitution of India.

5. The Issue of 73rd Constitutional Amendment Act in Jammu and Kashmir

The Indian Parliament passed the 73rd Constitutional Amendment Act in April 1993. This Act is yet to be implemented by the Government of J&K. However, the state framed ‘The Jammu and Kashmir Panchayat Rules - 1996, based on its own Panchayati Raj Act of 1989. As J&K has been passing through turmoil since 1989, the progress on establishment of panchayats was adversely affected. Finally, in a positive development, the elections to the village panchayats were conducted successfully in 2011. While the state of J&K is moving ahead with the Panchayati Raj provisions of the Act passed in the state legislature, it has not accepted the 73rd Amendment passed by the Indian Parliament on the grounds that it violates Article 370 of the Constitution of India. Article
370 grants special status to Jammu and Kashmir, and specifies that except for Defense, Foreign Affairs and Communications, the Indian Parliament required the State Government’s concurrence for applying all other laws to the state of J&K. The state government has not accorded concurrence to make the 73rd Amendment applicable to the state. 

The key mandatory provisions of 73rd Amendment are as under: -

1. The establishment in every state (except those with populations below 2 million) of rural local bodies (panchayats) at the village, intermediate and district levels.

2. Direct elections to all seats in the panchayats at all levels.

3. Compulsory elections to panchayats every five years with elections being held before the end of the term of the incumbent panchayat. In the event that a panchayat is dissolved prematurely, elections must be held within six months, with the newly elected members serving out the remainder of the five year term.

4. Mandatory reservation of seats in all panchayats at all levels for Dalits and Adivasis in proportion to their share of the panchayat population.

5. Mandatory reservation of one-third of all seats in all panchayats at all levels for women, with the reservation for women applying to the seats reserved for Dalits and Adivasis as well.

6. Indirect elections to the position of panchayat chairperson at the intermediate and district levels.

7. Mandatory reservation of the position of panchayat chairperson at all levels for Dalits and Adivasis in proportion to their share in the state population.

8. Mandatory reservation of one-third of the positions of panchayat chairperson at all three levels for women.

9. In addition, the Act mandates the constitution of two state-level commissions; an independent election commission to supervise and manage elections to local bodies, such as the Election Commission of India manages state assembly and parliamentary elections.

10. A state finance commission, established every five years, to review the financial position of local bodies and recommend the principles that should govern the allocation of funds and taxation authority to local bodies.

The issue of the 73rd Amendment is finding increasing resonance in the state and herein lie the seeds of future conflict. The Government of J & K has rejected implementation of the 73rd Amendment citing provisions of Article 370. A statement by a minister of the J&K Government is explicit on that account. However, the state government had no hesitation in extending the "National Rural Employment Guarantee Act (NREGA)” to J&K, as it is populist measure. But there remains a marked reservation in implementing the 73rd Amendment as political parties in J&K, do not want to give more powers to Panchayats as incorporating all the features of the 73rd Amendment would make them independent with respect to planning and execution of development works and utilization of funds. The Chief Minister has accepted the fact that devolution of power to the panchayats had not gone down well with a section of politicians and bureaucrats. Further, the two partners in the ruling coalition government in the state have taken opposing stands with the national party favoring implementation of the 73rd Amendment and the regional party opposing it. The main opposition party in the state has now announced its decision to introduce an amendment to the State Panchayati Raj Act 1989 in the state assembly incorporating the provisions of the 73rd Amendment. The political stage is thus getting set for bitter controversy which could provide the separatists and the hardliners an opportunity to whip up sentiments in the Valley on the emotive issue of Article 370. This could bring violent protests back to the streets.


In April 2011, Panchayat elections held by the State government brought a new ray of hope for Kashmiris. It was a giant step towards strengthening democracy at the grassroots level. The state witnessed 80 per cent turnout of voters which is also said to have marked the return of “normalcy” in the region. Nearly 33000 panches and sarpanches were elected in Jammu and Kashmir, out of which 33 per cent seats were reserved for women. It was observed that the Panchayati Elections of 2011 had much more participation of public then the Panchayat elections of 1998. During 1998 Panchayati Election in Kashmir Valley public, candidates as well as their supporters were apprehensive about their security. Their main concern was security rather than campaigning. In most of the cases they were hesitating to visit their village and ward without security whereas in 2011 from the very beginning the public as well as candidates were more than eager to participate in panchayat elections. The panchayat elections of 2011 like previous election were held on non political party basis but political parties were actively involved in campaigning for their supporters. All the leading political personalities- M.P, M.L.A, M.L.C, even ministers were campaigning for their respective candidates.
AJKPC demands monthly honorarium for panchayat court members: The All Jammu and Kashmir Panchayat Conference (AJKPC), a body of elected Panchayat representatives has demanded several benefits, including immediate release of monthly honorarium to all the members of panchayat courts. Accusing concerned authorities of ignoring the grievances of the Judicial Committee members, AJKPC president Anil Sharma said that the State government is least bothered to strengthen Panchayati Raj institutions and the grassroots-level judicial system. The government is not only not implementing the 73rd Amendment of the Constitution, but also violating the Jammu and Kashmir Panchayati Raj Act, 1989, he said. “As per the act, the chairman and other members of panchayat courts are entitled for remuneration, but neither any officer nor the concerned minister is coming clear on this issue,” Sharma alleged. He added that panchayat courts are part and parcel of the Panchayati Raj system and we won’t allow any injustice to them.

This paper concludes that there is need to define “concrete results” might appear to be a tall order in an area where quantification is difficult. A place to begin, however, could be the well-established body of knowledge on the causes of corruption. For example, efforts to curb corruption could be assessed on the basis of how effective they were in bringing about the implementation of policies known to reduce corruption, such as the elimination of government restrictions that create rents. This paper has concluded that there is evidence that corruption lowers economic growth, thereby breeding poverty over time. At the same time, poverty itself might cause corruption, perhaps because poor countries cannot devote sufficient resources to setting up and enforcing an effective legal framework, or because people in need are more likely to abandon their moral principles. Researchers have begun to analyze the link between civil servants’ wages and the extent of corruption. It has been suggested that reasonable wages are necessary condition for avoiding corruption, though not a sufficient one.

1. Despite the public enthusiasm shown in the Panchayati elections held in 2011 the elected representatives are not happy with the state of affairs. Some elected representatives - Sarpanches or Panches - are unfortunately acting like dictators in their own villages and are making life of their own villagers miserable.

2. Lack of awareness in implementing the system, the bureaucratic delays, political interference, economic reasons and social pressures has made the Panchayati Raj dysfunctional and thus it is more or less cosmetic and looks like a Sarpanch Raj in many areas instead of Panchayati Raj as some Sarpanches & Panches are behaving like self-styled area commanders who do not at all consider to be accountable to the people who elected them. We have many examples which proves that there is Sarpanch Raj prevalent in our state rather than Panchayati Raj.

3. In many villages the Sarpanches are really trying to do good work but do not get support of the administration and those Sarpanches who are unleashing reign of terror on poor villagers are unfortunately getting full support of the administration and this is not without reason. One of the important reasons is that such Sarpanches are very close to local MLAs of the area and the block / district administration along with police is bound to protect their interests.

4. Recently incidents which took place in Kutabal area of Chadoora block in Budgam or Asham Sonawari in Bandipora where the Sarpanches
have been making life of poor people miserable by even physically beating them clearly shows how the Sarpanches are transgressing the limits of the Panchayati Raj. Even a Sarpanch has provided money to his 27 relatives under Indira Awas Yojna (IAY) which was actually meant for people living under Below Poverty Line (BPL) category who are homeless and such families are to be paid Rs 48,500 each but the Sarpanch of Kutabal Chadoora paid this money to his relatives who are all well off having large amount of land and some of them are Government employees too. These relatives have been illegally provided BPL ration cards also. This all was exposed after one local young man sought the details under RTI Act and till date the man is under threat from the Sarpanch and the Deputy Sarpanch of the area who physically attacked him twice and police did not took any action against the accused other than filing an FIR. They were not even kept in lockup.

5. In a recent example from far off district Kupwara a Sarpanch in an unusual manner torched the snuggled timber in the full day light. The Sarpanch here crossing the limit of his assigned powers committed an anti law activity thus the Panchayats turned abuse and ill spreading institutions on the name of Local governance. Another heart breaking story we had from Baramulla district where a Sarpanch threw Kangri [Firepot] on a teenager girl. These like heinous acts from the Sarpanchs have raised the questions on the functioning of the Panchayat Raj institutions.

8. Suggestions.

If the governance is to be localized in proper way we need to understand that the Panchayat Raj institutions are to be made accountable before the higher authorities. Why cannot we go for the mechanism which makes the Panchayats the institutions of ideal governance? If the government is planning to fix the salary of Sarpanchs then the first step we have to take is to ensure the complete transparency in the working circles. If government is so concerned why cannot we go for the laws which will bring the Panchayats under the purview of transparency? Most often we go through the swindling of funds by the Panchayats in newspapers. The following suggestions should be addressed so that PRI’s in Jammu and Kashmir can be made efficient and transparent:

1. There is a need to have a continuous scheme of training programme for PRIs officials. This training should have a basic curriculum common all across the country.

2. Those panchayat members should not be allowed to contest for polls that have criminal backgrounds.

3. The pre-requisite educational qualification should be made mandatory for Panchayat representatives.

4. There should a complete mechanism of transparency regarding the works assigned to panchayats.

5. There should be a complete mechanism of social audit in panchayats.

6. There is a great need to implement all laws and clauses of 73rd Amendment Act in Jammu and Kashmir Panchayati Raj System.

7. A fixed monthly remuneration should be given to all panchayati members of Jammu and Kashmir.

9. Conclusions

People might do politics over these elections but a man living in some remote rural area of our state has voted just to ensure he gets better roads, power and water. In all this game of politics, it is the Aam Aadmi getting sandwiched; one side who tells him to boycott the elections and another plays politics once he participates in the elections. What the power brokers holding divergent views need to answer is whether there is any other option that without having institutions like Panchayats, Municipal Councils or Assemblies that Jammu & Kashmir can be governed? Who will control the Government departments / organizations? Who will give salaries to Government employees? How the law and order be maintained? How will our schools, colleges and universities function? Who will construct the roads? We need such institutions so that we run our internal administration. The success of the panchayats in Kashmir has intrinsic merit and long-term ramifications for our unity. The institution of Panchayat have to be made powerful but the control should follow every such provision of power. I remember the L D White’s quote where he says that “power corrupts and the absolute power corrupts absolutely”. The institutions of Panchayats have seized a very degree of power from the higher political class. The power now percolates down to the grass root level hence the chances of negative use or abuse of power go very high. We have to ensure that only the educated class forms the ranks of Panchayat, only people who don’t have criminal background go for the polls and only those who have some form of credible name in the area contest the elections.

References


